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Division I. General Regulations

Chapter 6.04

ADVERTISING SIGNS AND OTHER ADVERTISING METHODS

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6.04.010 Prohibited on posts and poles.

It is unlawful for any person to affix in any manner any sign, placard, poster, card, banner or other indicia of the interests of any person, group or organization on any post or pole, including, but not limited to, light and telephone poles, on any street, sidewalk, thoroughfare or public right-of-way within the jurisdiction of the metropolitan government. (Prior code § 3-1-1)

6.04.020 Prohibited on street, sidewalk and thoroughfare surfaces.

It is unlawful for any person to affix in any manner, permanent or temporary, any words, phrases or advertising matter upon the surface of any street, sidewalk or other thoroughfare within the jurisdiction of the metropolitan government. (Prior code § 3-1-2)

6.04.030 Exemptions from provisions of Sections 6.04.010 and 6.04.020.

The metropolitan traffic and parking commission, the metropolitan board of parks and recreation, the department of metropolitan police, the department of fire, the Nashville Transit Authority and all other departments, agencies, boards or commissions of the metropolitan government and the proper agencies of the state and of the United States of America are expressly exempted from the provisions of Sections 6.04.010 and 6.04.020 in the performance of their respective functions directed toward the orderly movement of traffic and pedestrians of the streets, sidewalks and other thoroughfares within the jurisdiction of the metropolitan government and in making other lawful and proper use of such streets, sidewalks and other thoroughfares. (Prior code § 3-1-3)

6.04.040 Consent of property owner and occupant required when.

It is unlawful for any person to paint or mark upon any wall or fence or upon any pavement or step or upon other objects about the streets or other public places, any advertisement or any other matter to disfigure the same without the consent, previously obtained, of the owner and of the occupant for the time being of the property to which the object so disfigured may pertain. (Prior code § 3-1-4)

6.04.050 Circulars or handbills—Distribution permitted when.

Any person residing and doing business in the area of the metropolitan government may, without being required to take out a license, distribute circulars or handbills advertising the business in which such person is directly engaged. (Prior code § 3-1-5)

6.04.060 Conflict of provisions.

Nothing contained in Sections 6.04.030, 6.04.040 and 6.04.050 shall be construed to authorize any person to paint or erect signs, post bills or distribute circulars or other advertising material in a manner or in places not permitted by existing laws or ordinances. (Prior code § 3-1-6)

6.04.070 Removing or defacing lawful advertising prohibited.

No person shall wilfully or maliciously tear down, deface, destroy or cover up any handbill, placard or poster put upon any place lawfully used for such purpose. (Prior code § 3-1-7)

6.04.080 Metal signs on street markers permitted when.

A. It is lawful for any church or other nonprofit organization operated solely for the public welfare to place or cause to be placed on top of street markers metal signs announcing, pointing to or otherwise indicating the location of such churches or organizations. Such signs shall be securely fastened in an approved manner on the top of such street markers so as not to create a hazard to persons or property or to damage or deface the street marker, and shall be not more than twenty-four inches wide nor more

than eighteen inches high, shall be at least eighteen inches in from the vertical plane of the curb and at least nine feet above the average grade of the sidewalk adjacent to the marker on which the sign is placed. Such signs shall not be placed over a traveled way.

B. No such sign shall be placed so as to interfere with traffic-control devices and signs, nor more than two blocks distant from the organization which it is announcing. The placing of such signs shall be removed within three days after notice to do so by the director of public works. (Prior code § 3-1-8)

6.04.090 Loudspeakers and noisy instruments prohibited—Exceptions.

It is unlawful to advertise goods and wares, by auction or otherwise, by use of loudspeakers, ringing of bells, beating of drums, gongs or by any other loud and noisy modes of advertising or the use of such means to draw attention to, or to advertise, any commercial, industrial, private or other enterprise; provided, that this section shall not be construed to prohibit the using of bands which may parade the streets and play pursuant to permits issued by the chief of police. (Prior code § 3-1-9)

Chapter 6.08

CABLE COMMUNICATIONS FRANCHISE AND REGULATIONS

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6.08.005 Findings and intent of the council.

The council of the metropolitan government of Nashville and Davidson County finds that the development of cable television and communications systems has conferred substantial benefits upon the people of metropolitan Nashville and Davidson County. The council further finds that the continuation and expansion of such systems, in terms of area covered and services provided, is in the public interest of metropolitan Nashville and Davidson County. Due to the complex and rapidly changing technology associated with cable television, the council further finds that the public convenience, safety, and general welfare can best be served by establishing regulatory powers within the limits allowed by federal law and Tennessee law, which should be vested in the council or such persons as the council shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to best satisfy the public interest and public purpose in these matters, and any franchise issued pursuant to this chapter shall be deemed to include these findings as an integral part thereof. (Ord. 95-1368 § 2 (part), 1995)

6.08.010 General provisions.

A. Title. This chapter shall be referred to as "Nashville-Davidson County Cable Communications Franchise and Regulatory Ordinance."

B. Purpose. The metropolitan county council of Nashville and Davidson County finds that the development of cable television systems has the potential to be of great benefit to the people of metropolitan Nashville. Cable technology is rapidly changing, and cable plays an essential role as part of metropolitan Nashville's basic infrastructure. Cable television systems extensively make use of scarce and valuable public rights-of-way, in a manner different from the way in which the general public uses them, and in a manner reserved primarily for those who provide services to the public, such as utility companies. The grant of a franchise has the effect of giving the holder a special privilege that confers significant economic benefits. This creates a need to ensure that the holder of a franchise exercises it in the public trust. The council, therefore, finds that public convenience, safety, and general welfare can best be served by establishing regulatory powers vested in metropolitan Nashville or such persons as the council so designates to protect the public and to ensure that any franchise granted is operated in the public interest. In light of the foregoing, the following goals, among others, underlie the provisions set forth in this chapter:

1. Cable should be available to as many metropolitan Nashville residents as possible.

2. A cable system should be capable of accommodating both present and reasonably foreseeable future cable-related needs of the community.

3. A cable system should be constructed and maintained during a franchise term so that changes in technology may be integrated to the maximum extent possible into existing system facilities, taking into account the costs of implementing such changes.

4. A cable system should be responsive to the needs and interests of the local community.

The council intends that all provisions set forth in this chapter be construed to serve the public interest and the foregoing public purposes, and that any franchise issued pursuant to this chapter be construed to include the foregoing findings and public purposes as integral parts thereof. (Ord. 95-1368 § 2 (part), 1995)

6.08.020 Definitions and word usage.

For the purposes of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, Chapter 5, Subchapter V-A, 47 U.S.C. Sections 521 et seq., as amended, and, if not defined therein, their common and ordinary meaning.

"Access channel" means any channel on a cable system set aside by a franchisee for public, educational, or governmental use.

"Affiliate" means any person who owns or controls, is owned or controlled by, or is under common ownership or control with a franchisee. For purposes of Sections 6.08.040(B)(3)(g) and (D)(1), 6.08.070(A)(1), (C)(1) (except for Section 6.08.070(C)(1)(a) as it relates to Gross Revenues) and (C)(3)(b), and 6.08.140(B)(2)(d) hereof only, "affiliate" means only such persons who are directly involved in the management or operation of the cable system in metropolitan Nashville.

"Basic service" means any service tier that includes the retransmission of local television broadcast signals.

"Cable act" means the Cable Communications Policy Act of 1984, 47 U.S.C. Sections 521 et seq., as amended from time to time.

"Cable service" means (1) the one-way transmission to subscribers of video programming or other programming services; and (2) subscriber interaction, if any, which is required for the selection of such video programming or other programming service. Where a franchise agreement so provides, cable service may also include other lawful nonvideo communications services.

"Cable communications system," "cable system" or "system" means a facility consisting of antennas, fiber optic cables, transmitters and receivers, coaxial cables and amplifiers, towers, microwave or other wireless transmission links, and any other conductors, converters, equipment or facilities, designed and constructed for the purpose of distributing video programming to subscribers and/or producing, receiving, amplifying, storing, processing, switching, or distributing audio, video, digital or other forms of electronic signals sold or distributed to subscribers, which is provided to multiple customers within metropolitan Nashville. Such term does not include (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (2) a facility that serves only customers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way, including streets or easements; (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Cable Act, except that such facility shall be considered a cable system if such facility is used in the transmission of video programming, whether on a common-carrier or noncommon-carrier basis, directly to customers; or (4) any facilities of any electric utility used solely for operating its electric utility systems. A reference to a cable system refers to any part thereof, including, without limitation, converters.

"CATV special committee" means the committee specifically described in Section 6.08.080(A).

"Council" means the present metropolitan county council of the metropolitan government or any successor to the legislative powers of the present council.

"Educational access channel" means any channel on a cable system set aside by a franchisee for educational use.

"FCC" means the Federal Communications Commission, its designee, or any successor governmental entity thereto.

"Franchise" means a nonexclusive authorization granted in accordance with this chapter to construct, operate, and maintain a cable system along the public rights-of-way and provide cable service within all or a specified area of metropolitan Nashville. Any such authorization, in whatever form granted, shall not mean or include or be in lieu of, any franchise or permit required for the privilege of transacting and carrying on a business within metropoli-

tan Nashville as required by the ordinances and laws of metropolitan Nashville, or for attaching devices to poles or other structures, whether owned by metropolitan Nashville, Nashville Electric Services or a private entity, or for excavating or performing other work in or along public rights-of-way. Unless a franchise agreement so provides, a franchise shall not include, or be in lieu of, the franchise required by Ordinance No. 094-1103.

"Franchise agreement" means a contract entered into in accordance with the provisions of this chapter between metropolitan Nashville and a franchisee that sets forth, subject to this chapter, the terms and conditions under which a franchise will be exercised.

"Franchise area" means the area of metropolitan Nashville that a franchisee is authorized to serve by its franchise agreement.

"Franchisee" means a natural person, partnership, domestic or foreign corporation, association, joint venture, or organization of any kind that has been granted a cable communications franchise by the mayor and council of metropolitan Nashville.

"Governmental access channel" means any channel on a cable system set aside by a franchisee for government use.

"Gross revenues" means any and all revenues of any kind or nature, as determined in accordance with generally accepted accounting principles, derived by a franchisee, its affiliates, or any person in which a franchisee has a financial interest, or by any other entity that is a cable operator of a system, from the operation of a franchisee's cable system in the geographic boundaries of metropolitan Nashville, including any other facilities associated therewith. Gross revenues include, by way of illustration and not limitation, periodic fees charged subscribers for any basic, optional, premium, per-channel, or per-program service; installation, disconnection, reconnection, maintenance, and change-in-service fees; leased channel fees; late fees and administrative fees; fees, payments, or other consideration received from programmers for carriage of programming on the system; revenues from rentals or sales of converters or other equipment; advertising revenues; barter; revenues from program guides; revenues from the sale or carriage of, or lease of capacity for, any other lawful communications service authorized to be provided by a franchise agreement, including information, bypass or other telecommunications services; and revenues from home shopping and bank-at-home channels. Gross revenues shall be the basis for computing the franchise fee under any franchise. Gross revenues shall not include (1) programming revenues of any affiliate of a franchisee whose programming is carried on the system where such revenues are paid to said affiliate by the franchisee and recovered by the franchisee through charges to subscribers that are included in gross revenues; (2) the revenues of any affiliate of a franchisee that has been granted a separate franchise by metropolitan Nashville and whose revenues are thereby subject to a separate franchisee fee; (3) to the extent consistent with generally accepted accounting principles, actual bad debt write-offs, provided, however, that all or any part of any such actual bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected; and (4) any taxes on services furnished by a franchisee which are imposed directly on any subscriber or user by the state, metropolitan Nashville, or other governmental unit and which are collected by a franchisee on behalf of said governmental unit provided, however, that a franchise fee is not such a tax.

"Metropolitan Nashville" means the metropolitan government of Nashville and Davidson County.

"Person" means an individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include metropolitan Nashville.

"Public access channel" means any channel on a cable system set aside by a franchisee for use by the general public, including groups and individuals, and which is available for such use on a nondiscriminatory basis.

"Public rights-of-way" means the surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, easement, or similar property in which metropolitan Nashville now or hereafter holds any property interest, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a cable system. No reference herein, or in any franchise agreement, to a "public right-of-way" shall be deemed to be a representation or guarantee by metropolitan Nashville that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a franchisee shall be deemed to gain only those rights to use as are properly in metropolitan Nashville and as metropolitan Nashville may have the undisputed right and power to give.

"Sale" means any sale, exchange, or barter transaction.

"School" means any public educational institution, including primary and secondary schools, colleges and universities.

"Section" means any section, subsection or provision of this chapter.

"Service tier" means a package of two or more cable services for which a separate charge is made by the franchisee, other than a package of premium and pay-per-view services that is not subject to rate regulation under the Ca-

ble Act and applicable FCC regulations because those services are also sold on a true á la carte basis.

"Subscriber" means any person who legally receives any service delivered over a cable system.

"Transfer" means any transaction in which: (1) any ownership or other right, title, or interest of fifty percent or more in a franchisee, its franchise, or its cable system is sold, assigned, leased, sublet, or otherwise transferred, either directly or indirectly, in whole or in part, or any lesser ownership, right, title or interest is sold, assigned, leased, sublet, or otherwise transferred to a person holding a minority interest in a franchisee, its franchise, or its cable system such that such person would hold fifty percent or more interest upon consummation of such transaction; or (2) there is any change, acquisition, or transfer of control of the franchisee; or (3) the rights and/or obligations held by the franchisee under its franchise are transferred, directly or indirectly, to another party; or (4) any change or substitution occurs in the managing general partners of the franchisee.

"Control" for purposes of this section means the legal or practical ability to exert actual working control over the affairs of a franchisee, franchisee or applicant, either directly or indirectly, whether by contractual agreement, majority ownership interest, any lesser ownership interest, or in any other manner.

"Transmission of video programming directly to customers" means the delivery of programming to customer premises equipment, whether or not that programming is selected, controlled, or marketed to customers by the entity that delivers it.

"User" means a person or organization utilizing a channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a subscriber. (Ord. 95-1368 § 2 (part), 1995)

6.08.030 Grant of franchise.

A. Grant of Franchise. Metropolitan Nashville may grant one or more cable television franchises, and each such franchise shall be awarded in accordance with and subject to the provisions of this chapter. This chapter may be amended from time to time, and in no event shall this chapter be considered a contract between metropolitan Nashville and a franchisee such that metropolitan Nashville would be prohibited from amending any provision hereof; provided, however, that by entering into any franchise agreement hereunder, a franchisee shall not be deemed to have waived any right it may have to object to or challenge any amendment to this chapter made after the effective date of such franchise agreement on the grounds that such amendment abridges any contractual rights a franchisee may have in its franchise agreement or is otherwise unlawful.

B. Franchise Required. No person may construct or operate a cable system without a franchise granted by metropolitan Nashville. No person may be granted a franchise without having entered into a franchise agreement with metropolitan Nashville pursuant to this chapter.

C. Council Action Required. All franchises, and all renewals, extensions and amendments thereof shall be granted only by ordinance. No such ordinance shall be adopted before the application therefor has been filed with the council through the metropolitan clerk and same shall have been referred by the council to the CATV special committee for its consideration.

1. No ordinance granting or revoking a franchise shall be passed by the council without a full public proceeding affording due process in which the franchisee's legal, character, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements have been reviewed and approved either by the full council or a committee composed of members of the council only. The franchise shall include those provisions of the franchisee's application pursuant to Section 6.08.040 that are finally negotiated and accepted by metropolitan Nashville and franchisee in writing. Nothing in the franchise shall bedeemed to waive the requirements of the various codes and ordinances of metropolitan Nashville regarding permits, fees to be paid, or manner of construction.

2. Franchises shall be evidenced by a contract adopted by the council, which contract shall be submitted to the mayor in the manner provided for by the Metropolitan Government Charter.

D. Length of Franchise. A franchise shall initially be granted for a period as set forth in a franchise agreement; provided, however, that the term of a franchise shall not exceed fifteen years. Notwithstanding the foregoing, a franchisee may apply for renewal or extension pursuant to Section 6.08.040 of this chapter.

E. Franchise Characteristics.

1. A franchise authorizes use of public rights-of-way for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a cable system within a franchise area, but does not expressly or implicitly authorize a franchisee to provide service to, or install a cable system on, private property without owner consent (except for use of compatible easements pursuant to Section 621 of the Cable Act, 47 U.S.C. Section 541(a)(2)), or to use publicly or privately owned conduits without a separate agreement with the owners.

2. A franchise is nonexclusive and will not explicitly or implicitly preclude the issuance of other franchises to operate cable systems within metropolitan Nashville; affect metropolitan Nashville's right to authorize use of public rights-of-way by other persons to operate cable systems or for other purposes as it determines appropriate; or affect metropolitan Nashville's right to itself construct, operate, or maintain a cable system, with or without a franchise.

3. Once a franchise agreement has been accepted and executed by metropolitan Nashville and a franchisee, such franchise agreement shall constitute a contract between the franchisee and metropolitan Nashville, and the terms, conditions, and provisions of such franchise agreement, subject to this chapter and all other duly enacted and applicable laws, shall define the rights and obligations of the franchisee and metropolitan Nashville relating to the franchise.

4. All privileges prescribed by a franchise shall be subordinate to any prior lawful occupancy of the public rights-of-way, and metropolitan Nashville reserves the right to reasonably designate where a franchisee's facilities are to be placed within the public rights-of-way.

5. A franchise shall be a privilege that is in the public trust and personal to the original franchisee. No transfer of a franchise shall occur without the prior consent of metropolitan Nashville and unless application is made by the franchisee and city approval obtained, pursuant to this chapter and the franchise agreement.

6. A franchisee may not require an exclusive contract with a subscriber (including, but not limited to, a building owner) as a condition of providing or continuing service; provided, however, that the foregoing shall not preclude a franchisee from entering into an exclusive contract to the extent permitted by applicable law if the subscriber is made aware of the foregoing and is willing to enter such a contract, nor shall the foregoing prohibit a franchisee from meeting competition from an unfranchised multichannel video programming distributor to the extent permitted by applicable law.

F. Franchisee Subject to Other Laws, Police Power.

1. A franchisee shall at all times be subject to and shall comply with all applicable federal, state, and local laws. A franchisee shall at all times be subject to all lawful exercise of the police power of metropolitan Nashville, including all rights metropolitan Nashville may have under 47 U.S.C. Section 552.

2. No course of dealing between a franchisee and metropolitan Nashville, or any delay on the part of metropolitan Nashville in exercising any rights hereunder, shall operate as a waiver of any such rights of metropolitan Nashville or acquiescence in the actions of a franchisee in contravention of rights except to the extent expressly waived by metropolitan Nashville or expressly provided for in a franchise agreement.

3. Metropolitan Nashville shall have the maximum plenary authority to regulate cable systems, franchisees, and franchises as may now or hereafter be lawfully permissible; except where rights are expressly waived by a franchise agreement, they are reserved, whether expressly enumerated or not.

G. Modification of Franchise in Event of Conflict. Should the state of Tennessee, FCC rules or federal law require the franchisee to perform or refrain from performing any act, the performance or nonperformance of which is inconsistent with any of the provisions of this chapter or a franchisee's franchise agreement, the franchisee shall so notify the council and the council shall thereupon, if it determines that a material provision of this chapter or the franchise agreement is affected, have the right to modify any such provision herein to such reasonable extent as may be necessary to carry out the full intent and purpose of the franchise agreement and this chapter. Metropolitan Nashville may terminate the franchise in the event metropolitan Nashville determines that substantial and material compliance with the original proposed terms of the franchise agreement has been frustrated by such state or federal requirements.

H. Interpretation of Franchise Terms.

1. In the event of a conflict between this chapter and a franchise agreement, this chapter shall control except where a franchise agreement provides otherwise or where prohibited by applicable law.

2. The provisions of this chapter and a franchise agreement will be liberally construed in favor of promoting the public interest.

3. A franchise agreement will be governed by and construed in accordance with the laws of the state of Tennessee and federal law.

I. Operation of a Cable System Without a Franchise. Any person who occupies public rights-of-way for the purpose of operating or constructing a cable system and who does not hold a valid franchise from metropolitan Nashville shall be subject to all provisions of this chapter, including but not limited to its provisions regarding construction and technical standards and franchise fees. In its discretion, metropolitan Nashville at any time may require such person to enter into a franchise agreement within thirty days of receipt of a written notice by metropolitan Nashville that a franchise agreement is required; require such person to remove its property and restore the area to a condition satisfactory to metropolitan Nashville within such time period; remove the property itself and restore the area to a satisfactory condition and charge the person the

costs therefor; and/or take any other action it is entitled to take under applicable law, including filing for and seeking damages under trespass. In no event shall a franchise be created unless it is issued by action of metropolitan Nashville and subject to a written franchise agreement.

J. Acts at Franchisee's Expense. Any act that a franchisee is or may be required to perform under this chapter, a franchise agreement, or applicable law shall be performed at the franchisee's expense, unless expressly provided to the contrary in this chapter, the franchise agreement, or applicable law.

K. Eminent Domain. Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the right of metropolitan Nashville to acquire the property of the franchisee through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, metropolitan Nashville's right of eminent domain with respect to any public utility.

L. Exclusive Contracts and Anticompetitive Acts Prohibited.

1. Except to the extent permitted by subsection (E)(6) of this section, no franchisee shall, as a condition of extending service, require any person to enter into an exclusive contract for the provision of cable service, or demand the exclusive right to serve a person or location.

2. No franchisee shall engage in acts that have the purpose or effect of unlawfully limiting competition for the provision of cable service or services similar to cable service in metropolitan Nashville within the meaning of applicable federal or state law.

M. Restrictions—Franchisee, Officers and Directors.

1. Neither the franchisee nor any officer or director of the franchisee shall hold, directly or indirectly, any stock or other beneficial ownership interest that is attributable under FCC rules in any other company owning or operating a cable system separately franchised within metropolitan Nashville.

2. No officer or director of the franchisee shall be an officer or director of any company owning or operating any business of the type mentioned in the preceding paragraph. (Ord. 95-1368 § 2 (part), 1995)

6.08.040 Applications for grant, renewal, or modification of franchises.

A. Written Application.

1. A written application shall be filed with metropolitan Nashville for (a) grant of an initial franchise; (b) renewal of a franchise under 47 U.S.C. Section 546(a)—(g); or (c) modification of a franchise agreement pursuant to this chapter or a franchise agreement. An applicant shall demonstrate in its application compliance with all requirements of this chapter and all applicable laws.

2. Any application for a franchise shall be made to the council through the metropolitan clerk and introduced in the council in the manner provided by the rules of the council. No grant, renewal or modification of a franchise shall be issued until the council has received the recommendation of the CATV special committee or the CATV special committee has failed to act within sixty days from the date the council has referred such application to such committee, unless a longer period is granted by the council.

3. Each such application shall be kept on file with the metropolitan clerk. Any intentional misrepresentation in such application shall be grounds for the rejection of the application. The application shall be a part of any franchise agreement subject to this chapter.

4. The mandatory referral to the metropolitan planning commission required by Section 11.505 of the Metropolitan Charter shall apply to each franchise application, but such referral to the planning commission may be made at the same time as any one or more franchise applications or bills are referred to the CATV special committee.

5. To be acceptable for filing, a signed original of the application shall be submitted together with twelve copies. The application must be accompanied by the required application filing fee as set forth in subsection F of this section, conform to any applicable request for proposals, and contain all required information. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

6. All applications accepted for filing shall be made available by metropolitan Nashville for public inspection.

B. Application for Grant of a Franchise, Other Than a Cable Act Renewal Franchise.

1. A person may apply for a franchise by submitting a request for issuance of a notice of sale ("NOS") and requesting an evaluation of its application pursuant to subsection (B)(4) of this section. Upon receipt of a request for an NOS, metropolitan Nashville shall, if necessary, commence a proceeding to identify the future cable-related needs and interests of the community and, upon completion of that proceeding, shall promptly issue an NOS and proposed franchise agreement, which shall be mailed to the person requesting its issuance and made available to any other interested party. The applicant shall respond within the time directed by metropolitan Nashville, providing the information and material set forth in subsection D of this section. The procedures, instructions, and requirements set forth in the NOS shall be followed by each applicant as if set forth and required herein. Metropolitan

Nashville or its designee may seek additional information from any applicant and establish deadlines for the submission of such information.

2. Notwithstanding the provisions of subsection (B)(1) of this section, a person may apply for an initial franchise by submitting an unsolicited application containing the information required in subsection D of this section and requesting an evaluation of that application pursuant to subsection (B)(3) of this section. Prior to evaluating that application, metropolitan Nashville may conduct such investigations as are necessary to determine whether the application satisfies the standards set forth in subsection (B)(3) of this section and may seek additional applications.

3. In evaluating an application for a franchise, metropolitan Nashville shall consider, among other things, the following factors:

a. The extent to which the applicant has substantially complied with the applicable law and the material terms of any existing cable franchise for metropolitan Nashville;

b. Whether the quality of the applicant's service under any existing franchise in metropolitan Nashville, including signal quality, level of service, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the communities served;

c. Whether the applicant has the financial, technical, and legal qualifications to provide cable service;

d. Whether the application satisfies any minimum requirements established by metropolitan Nashville and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests;

e. Whether, to the extent not considered as part of subsection (B)(3)(d) of this section, the applicant will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support;

f. Whether issuance of a franchise is warranted in the public interest considering the immediate and future effect on the public rights-of-way and private property that would be used by the cable system, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the public rights-of-way; the effect of granting a franchise on the ability of all cable systems in metropolitan Nashville to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications;

g. Whether the applicant or an affiliate of the applicant owns or controls any other cable system in metropolitan Nashville, or whether grant of the application may eliminate or reduce competition in the delivery of cable service in metropolitan Nashville.

4. If metropolitan Nashville finds that it is in the public interest to issue a franchise considering the factors set forth above, and subject to the applicant's entry into an appropriate franchise agreement, it shall issue a franchise. If metropolitan Nashville denies a franchise, it will issue a written decision explaining why the franchise was denied. Prior to deciding whether or not to issue a franchise, metropolitan Nashville shall hold one or more public hearings or implement other procedures under which comments from the public on an application may be received. Metropolitan Nashville also may grant or deny a request for a franchise based on its review of an application without further proceedings and may reject any application that is incomplete or fails to respond to an NOS. This chapter is not intended and shall not be interpreted to grant any applicant or existing franchisee standing to challenge the issuance of a franchise to another.

C. Application for Grant of a Cable Act Renewal Franchise. Applications for renewal under the Cable Act shall be received and reviewed in a manner consistent with Section 626 of the Cable Act, 47 U.S.C. Section 546. If neither a franchisee nor metropolitan Nashville activates in a timely manner or can activate the renewal process set forth in 47 U.S.C. Section 546(a)—(g) (including, for example, if the provisions are repealed), and except as to applications submitted pursuant to 47 U.S.C. Section 546(h), the provisions of this Section 6.08.040 shall apply and a renewal request shall be evaluated using the same criteria as any other request for a franchise. The following requirements shall apply to renewal requests properly submitted pursuant to the Cable Act:

1. If the provisions of 47 U.S.C. Section 546(a)—(g) are properly invoked, metropolitan Nashville shall issue a request for renewal proposal ("RFRP") after conducting a proceeding to review the applicant's past performance and to identify future cable-related community needs and interests. The department of information systems shall establish deadlines and procedures for responding to the RFRP, may seek additional information from the applicant, and shall establish deadlines for the submission of that additional information. Following receipt of the application responding to that RFRP (and such additional information as may be provided in response to requests), metropolitan Nashville will determine that the franchise should be renewed, or make a preliminary assessment that the franchise should not be renewed. This determination shall be in accordance with the time limits established by the Cable Act. The preliminary determination shall be made by resolution. If metropolitan Nashville determines that the franchise should not be renewed, and the applicant

that submitted the renewal application notifies metropolitan Nashville, either in its proposal in response to the RFRP or within ten working days of the preliminary assessment, that it wishes to pursue any rights to an administrative proceeding it has under the Cable Act, then the CATV special committee shall commence an administrative proceeding after providing prompt public notice thereof, in accordance with the Cable Act. If metropolitan Nashville decides preliminarily to grant renewal, it shall prepare a final franchise agreement that incorporates, as appropriate, the commitments made by the applicant in the renewal application. If the applicant accepts the franchise agreement, and the final agreement is ratified by metropolitan Nashville, the franchise shall be renewed. If the franchise agreement is not so accepted and ratified within the time limits established by 47 U.S.C. Section 546(c)(1), renewal shall be deemed preliminarily denied, and an administrative proceeding commenced if the applicant that submitted the renewal application requests it within ten days of the expiration of the time limit established by 47 U.S.C. Section 546(c)(1).

2. If an administrative hearing is commenced pursuant to 47 U.S.C. Section 546(c), the applicant's renewal application shall be evaluated considering such matters as may be considered consistent with federal law. The following procedures shall apply:

a. The CATV special committee shall serve as the administrative hearing body, and will evaluate the proposal. The director and staff of the department of information systems, or their designees (collectively "staff"), shall serve as the representative of the metropolitan government.

b. The CATV special committee shall establish a schedule for proceeding which allows for documentary discovery and interrogatory responses, production of evidence, and cross-examination of witnesses. Depositions shall not be permitted unless the party requesting the deposition shows that documentary discovery and interrogatory responses will not provide it an adequate opportunity to require the production of evidence necessary to present its case. The CATV special committee shall have the authority to require the production of evidence as the interests of justice may require, including to require the production of evidence by the applicant that submitted the renewal application and any entity that owns or controls or is owned or controlled by, or under common control with, such applicant directly or indirectly. The CATV special committee may issue protective orders, but shall not prohibit discovery on the ground that evidence sought is proprietary or involves business secrets. Any order may be enforced by a court of competent jurisdiction or by imposing appropriate sanctions in the administrative hearing.

c. The CATV special committee may conduct a prehearing conference and establish appropriate prehearing orders. Intervention by nonparties is not authorized except to the extent required by the Cable Act.

d. The CATV special committee shall require the staff and the applicant to submit prepared testimony prior to the hearing. Unless the parties agree otherwise, the applicant shall present evidence first, and the staff shall present evidence second.

e. Any reports or the transcript or summary of any proceedings conducted pursuant to 47 U.S.C. Section 546(a) shall for purposes of the administrative hearing be regarded no differently than any other evidence. The staff and the applicant must be afforded full procedural protection regarding evidence related to these proceedings, including the right to refute any evidence introduced in these proceedings or sought to be introduced by the other party. Both shall have the opportunity to submit additional evidence related to issues raised in the proceeding conducted pursuant to 47 U.S.C. Section 546(a).

f. Following completion of any hearing, the CATV special committee shall require the parties to submit proposed findings of fact with respect to the matters that metropolitan Nashville is entitled to consider in determining whether renewal ought to be granted. Based on the record of the hearing, the CATV special committee shall then prepare written findings with respect to those matters, and submit those findings to the council and to the parties.

g. The parties shall have thirty days from the date the findings are submitted to the council to file exceptions to those findings. The council shall thereafter issue a written decision granting or denying the application for renewal, consistent with the requirements of the Cable Act and based on the record of such proceeding. A copy of the final decision of the council shall be provided to the applicant.

h. The proceeding shall be conducted with due speed.

i. In conducting the proceedings, and except as inconsistent with the foregoing, the CATV special committee will follow applicable state administrative procedure laws, or the successor statutes thereto. The CATV special committee may request that the council adopt additional procedures and requirements as necessary in the interest of justice.

j. This section does not prohibit any franchisee from submitting an informal renewal application pursuant to 47 U.S.C. Section 546(h), which application may be granted or denied in accordance with the provisions of 47 U.S.C. Section 546(h). If such an informal renewal application is granted, then the steps specified in subsections

(C)(1) and (C)(2)(a—l) of this section need not be taken, notwithstanding the provisions of those subsections.

k. The provisions of this chapter shall be read and applied so that they are consistent with Section 626 of the Cable Act, 47 U.S.C. Section 546.

D. Contents of Applications. An NOS for the grant of a franchise, including an RFRP for a renewal franchise under 47 U.S.C. Section 546(c), shall require, and any application submitted (other than an application submitted pursuant to 47 U.S.C. Section 546(h)) shall contain, at a minimum, the following information:

1. Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of the ten largest holders of an ownership interest in the applicant and affiliates of the applicant, and all persons with five percent or more ownership interest in the applicant and its affiliates; the persons who control the applicant and its affiliates; all officers and directors of the applicant and its affiliates; and any other business affiliation and cable system ownership interest of each named person;

2. A demonstration of the applicant's technical ability to construct and/or operate the proposed cable system, including identification of key personnel;

3. A demonstration of the applicant's legal qualifications to construct and/or operate the proposed cable system, including but not limited to a demonstration that the applicant meets the following criteria:

a. The applicant must not have submitted an application for an initial or renewal franchise to metropolitan Nashville, which was denied on the ground that the applicant failed to propose a system meeting the cable-related needs and interests of the community, or as to which any challenges to such franchising decision were finally resolved adversely to the applicant, within three years preceding the submission of the application.

b. The applicant must not have had any cable television franchise validly revoked by any franchising authority within three years preceding the submission of the application.

c. The applicant must have the necessary authority under Tennessee law to operate a cable system.

d. The applicant shall not be issued a franchise if it may not hold the franchise as a matter of federal law. An applicant must have, or show that it is qualified to obtain, any necessary federal licenses, franchises, authorizations, approvals or waivers required to own and/or operate the system proposed.

e. The applicant shall not be issued a franchise if, at any time during the ten years preceding the submission of the application, the applicant or any of its officers or directors were convicted of any act or omission of such character that the applicant cannot be relied upon to deal truthfully with metropolitan Nashville and the subscribers of the cable system, or to substantially comply with its lawful obligations under applicable law, including obligations under consumer protection laws and laws prohibiting anti-competitive acts, fraud, racketeering, or other similar conduct.

f. The applicant shall not be issued a franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide.

g. The applicant shall not be issued a franchise if an elected official of metropolitan Nashville holds a controlling interest in the applicant or an affiliate of the applicant.

Notwithstanding the foregoing, metropolitan Nashville shall provide an opportunity to an applicant to show that it would be inappropriate to deny it a franchise under subsections (D)(3)(a), (b) or (e) of this section, by virtue of the particular circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of cable television systems;

4. A statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction and operation of the cable system proposed;

5. A description of the applicant's prior experience in cable system ownership, construction, and operation, and identification of communities in which the applicant or any of its principals have, or have had, a cable franchise or franchise or any interest therein, provided that an applicant that holds a franchise for metropolitan Nashville and is seeking renewal of that franchise need only provide this information for other communities where its franchise was scheduled to expire in the two calendar years prior to and after its application was submitted;

6. Identification of the area of metropolitan Nashville to be served by the proposed cable system, including a description of the proposed franchise area's boundaries;

7. A detailed description of the physical facilities proposed, including channel capacity, technical design, performance characteristics, headend, and access facilities;

8. Where applicable, a description of the construction of the proposed system, including an estimate of plant mileage and its location; the proposed construction schedule; a description, where appropriate, of how services will be converted from existing facilities to new facilities; and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;

9. The proposed rate structure, including projected charges for each service tier, installation, converters, and all other proposed equipment or services;

10. A demonstration of how the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for metropolitan Nashville, and how the applicant will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support to meet the community's needs and interests;

11. Pro forma financial projections for the proposed franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;

12. If the applicant proposes to provide cable service to an area already served by an existing cable franchisee, the identification of the area where the overbuild would occur, and a detailed explanation of the ability of the public rights-of-way and other property that would be used by the applicant to accommodate an additional system;

13. Any other information as may be reasonably necessary to demonstrate compliance with the requirements of this chapter;

14. Information that metropolitan Nashville may request of the applicant that is relevant to metropolitan Nashville's consideration of the application;

15. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and state law requirements.

E. Application for Modification of a Franchise. An application for modification of a franchise agreement shall include, at minimum, the following information:

1. The specific modification requested;

2. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of financial pro formas;

3. A statement whether the modification is sought pursuant to Section 625 of the Cable Act, 47 U.S.C. Section 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. Section 545;

4. Any other information that the applicant believes is necessary for metropolitan Nashville to make an informed determination on the application for modification; and

5. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with all federal and state law requirements.

F. Filing Fees. To be acceptable for filing, an application submitted after the effective date of the ordinance codified in this chapter shall be accompanied by a filing fee in the following amount to cover costs incidental to the awarding or enforcement of the franchise, as appropriate:

1. For an initial franchise:

a. A request for issuance of an NOS: $1,000.00,

b. A response to an NOS or an unsolicited application: $5,000.00;

2. For renewal of a franchise: $10,000.00;

3. For modification of a franchise agreement: $5,000.00;

4. For approval of a transfer: $5,000.00.

In addition, metropolitan Nashville may require the franchisee, or, where applicable, a transferor or transferee, to reimburse metropolitan Nashville for its reasonable out-of-pocket expenses in considering the application, including consultants' fees. Payments hereunder are not a franchise fee and fall within one or more of the exceptions in 47 U.S.C. Section 542(g)(2), and no such payments may be passed through to subscribers in any form.

G. Public Hearings. An applicant shall be notified of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard. In addition, prior to the issuance of a franchise, metropolitan Nashville shall provide for the holding of a public hearing within the proposed franchise area, following reasonable notice to the public, at which every applicant and its applications shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard. Reasonable notice to the public shall include causing notice of the time and place of such hearing to be published in a newspaper of general circulation in the proposed franchise area once a week for two consecutive weeks. The first publication shall be not less than fourteen days before the day of the hearing. (Ord. 95-1368 § 2 (part), 1995)

6.08.050 Construction provisions.

A. System Construction Schedule.

1. Every franchise agreement shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the cable system.

2. Failure on the part of a franchisee to commence and diligently pursue each of the requirements and com-

plete each of the matters set forth in its franchise agreement or to comply with the system design and construction plan submitted to metropolitan Nashville, including by providing the equipment specified (or its equivalent) and by following the distribution system design plan, construction plan and installation practices manual (except insofar as those plans or practices, if carried out, would result in construction of a system which could not meet requirements of federal, state or local law; and except for such modifications as the franchisee can demonstrate are typical in the industry or in the public interest), shall be grounds for termination of its franchise under and pursuant to the terms of Section 6.08.130(E); provided, however, that the council in its discretion may extend the time for the completion of construction and installation for additional periods in the event a franchisee, acting in good faith, experiences delays by reason of circumstances beyond its control.

B. Construction Procedures.

1. A franchisee shall construct, operate and maintain the cable system subject to the supervision of all of the authorities of metropolitan Nashville who have jurisdiction in such matters, and in strict compliance with all laws, ordinances, departmental rules and regulations affecting the system. Should the franchisee be required to place any lines or other equipment on any boulevard, parkway, or other property under control of the metropolitan Nashville, the manner of placement and location thereof shall be subject to the control of metropolitan Nashville.

2. The system, and all parts thereof, shall be subject to the right of periodic inspection by metropolitan Nashville on reasonable notice.

3. No construction, reconstruction or relocation of the system or any part thereof within the public rights-of-way shall be commenced until all written permits have been obtained. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the permit as are necessary for the purpose of protecting any structures in the public rights-of-way and for the proper restoration of such public rights-of-way and structures, and for the protection of the public and the continuity of pedestrian and vehicular traffic.

4. The council may, from time to time, issue such reasonable rules and regulations concerning the construction, operation and maintenance of the system as are consistent with the provisions of this chapter and the franchise issued pursuant to this chapter.

C. Construction Standards.

1. The construction, operation, maintenance, and repair of a cable system shall be in accordance with all applicable sections of the Occupational Safety and Health Act of 1970, as amended, the National Electrical Safety Code, the National Electric Code, National Cable Television Association Standards of Good Engineering Practices; Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17; AT&T Manual of Construction Procedures (Blue Book); all applicable utility construction requirements of the state of Tennessee; Applicant's Construction Procedures Manual; and other applicable federal, state, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a cable system, including, without limitation, local zoning and construction codes, and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as such standard, if followed, would result in a system that could not meet requirements of federal, state or local law). Metropolitan Nashville may adopt additional standards as required to ensure that work continues to be performed in an orderly and workmanlike manner, or to reflect changes in standards which may occur over the franchise term.

2. All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located to cause minimum interference with the rights and convenience of property owners.

3. All installation of electronic equipment shall be of a permanent nature, using durable components.

4. Without limiting the foregoing, antennae and their supporting structures (towers) shall be designed in accordance with the Uniform Building Code as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local laws, codes, and regulations, all as hereafter may be amended or adopted.

5. Without limiting the foregoing, all of a franchisee's plant and equipment, including, but not limited to, the antennae site, headend and distribution system, towers, house connections, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel so as not to endanger or interfere with improvements metropolitan Nashville shall deem appropriate to make or to interfere in any manner with the public rights-of-way or legal rights of any property owner or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.

6. All safety practices required by law shall be used during construction, maintenance, and repair of a cable system. A franchisee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to employees of franchisee.

7. A franchisee shall not place facilities, equipment, or fixtures where they will interfere with any gas, electric, telephone, water, sewer, or other utility facilities, or facilities of another cable system, or obstruct or hinder in any manner the various utilities of other franchisees serving the residents of metropolitan Nashville of their use of any public rights-of-way.

8. Any and all public rights-of-way, public property, or private property that is disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or construction of a system shall be promptly repaired by the franchisee, and restored to a condition at least as good as that which existed before the disturbance or damage occurred.

9. A franchisee shall, on reasonable notice and by a time specified by metropolitan Nashville or the state of Tennessee, protect, support, temporarily disconnect, relocate, or remove any of its property when required by metropolitan Nashville by reason of traffic conditions; public safety; public right-of-way construction; public right-of-way maintenance or repair (including resurfacing or widening); change of public right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility; public-right-of-way vacation; or for any other purpose where the convenience of metropolitan Nashville or the state would be served thereby; provided, however, that the franchisee shall, in all such cases, have the privilege of abandoning any property in place.

10. If any removal, relaying, or relocation is required to accommodate the construction, operation, or repair of the facilities of another person that is authorized to use the public rights-of-way, a franchisee shall, after thirty days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Metropolitan Nashville may resolve disputes as to responsibility for costs associated with the removal, relaying, or relocation of facilities as among entities authorized to install facilities in the public rights-of-way if the parties are unable to do so themselves, and if the matter is not governed by a valid contract between the parties or a state or federal law or regulation.

11. In the event of an emergency, or where a cable system creates or is contributing to an imminent danger to health, safety, or property, metropolitan Nashville may remove, relay, or relocate any or all parts of that cable system without prior notice.

12. A franchisee shall, on the request of any person holding a building moving permit issued by metropolitan Nashville, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting same, and the franchisee shall have the authority to require such payment in advance, except in the case where the requesting person is metropolitan Nashville, in which case no such payment shall be required. The franchisee shall be given not less than forty-eight hours' advance notice to arrange for such temporary wire changes.

13. Trimming of trees and shrubbery within the public right-of-way to prevent contact with franchisee's facilities shall be done in accordance with the standards approved by the urban forester in accordance with the ordinances of the metropolitan government. Removal or pruning of any tree or shrub shall only be done upon issuance of a permit by the urban forester. When trees or shrubs in the public right-of-way are damaged as a result of work undertaken by or on behalf of a franchisee, franchisee shall pay the metropolitan government within thirty days of submission of a statement by the metropolitan government, the cost of any treatment required to preserve the tree or shrub and/or cost for removal and replacement of the tree or shrub with landscaping of equal value and/or the value of the tree or shrub prior to the damage or removal, as determined by the urban forester or other authorized agent of the metropolitan government.

14. A franchisee shall use, with the owner's permission, existing underground conduits or overhead utility facilities whenever feasible and may not erect poles in public rights-of-way without the express written permission of metropolitan Nashville. Copies of agreements for use of conduits or other facilities shall be filed with metropolitan Nashville as required by a franchise agreement or upon metropolitan Nashville's request.

15. The undergrounding of cables is encouraged. Trunk, feeder and drop cable may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead. Whenever and wherever electric lines and telephone lines are underground or are moved from overhead to underground placement, all cable system cables and related facilities shall be placed, or similarly moved, underground, and the cost of movement of such cable facilities shall be solely the obligation of the franchisee. Where a development plan calls for the underground-

ing of utilities and the provision of cable service by a franchisee is required by this chapter, an agreement for the providing of cable service between the proponent of the development plan and the franchisee shall be obtained by the proponent of the development plan.

16. Upon reasonable prior notice to the franchisee, metropolitan Nashville shall have the right to install and maintain free of charge upon any poles owned by a franchisee any wire and pole fixtures that do not unreasonably interfere with the cable system operations of the franchisee. Franchisee's indemnification obligation under Section 6.08.120(f) shall not extend to any liability arising by reason of the acts or omissions of metropolitan Nashville with respect to any wire or pole fixtures installed or maintained by metropolitan Nashville pursuant to this paragraph.

17. Prior to erection of any towers, poles, or conduits or the construction, upgrade, or rebuild of a cable system authorized under this chapter, a franchisee shall first submit to metropolitan Nashville and other designated parties for approval a concise description of the cable system proposed to be erected or installed, including engineering drawings, if required by metropolitan Nashville, together with a map and plans indicating the proposed location of all such facilities. No erection or installation of any tower, pole, underground conduit, or fixture or any rebuilding or upgrading of a cable system shall be commenced by any person until approval therefor has been received from metropolitan Nashville, which approval shall not be unreasonably withheld.

18. Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of system equipment must be properly licensed under laws of the state and all applicable local ordinances, and each contractor or subcontractor shall have the same obligations with respect to its work as franchisee would have under this franchise agreement and applicable laws if the work were performed by franchisee. The franchisee must ensure that contractors, subcontractors and all employees who will perform work for it are trained and experienced. The franchisee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the franchise and applicable law, shall be fully responsible for all acts or omissions of contractors or subcontractors, shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor, and shall implement a quality control program to ensure that the work is properly performed.

D. Area Served. Unless otherwise provided in a franchise agreement, a franchisee shall build its system so that it is able to provide service to all residential dwellings located within its franchise area. A franchisee whose franchise area is the entire territorial limits of metropolitan Nashville must build its system so that it can extend service to residents, including residents located in areas which may be annexed in the future, in accordance with subsection E of this section.

E. Line Extension Requirements.

1. Density Requirements. Any franchisee whose franchise area is the entire territorial limits of metropolitan Nashville shall extend its trunk and distribution system to serve subscribers requesting service after the date hereof at no charge where:

a. The new subscriber requesting service is located within five hundred feet or less from the termination of the cable system, or

b. The density of potential subscribers to be passed by such extension is equal to or greater than ten potential subscribers per mile measured from the nearest point of the franchisee's feeder, trunk or distribution plant.

2. Exception for Areas Served by Another Cable Operator. A franchisee whose franchise area is the entire territorial limits of metropolitan Nashville ("Metro-wide franchisee") is not required to extend its trunk and distribution system to an area meeting the requirements of subsection (E)(1) of this section where the area is already served by another franchisee; provided, however, that if such other franchisee ceases to provide service in such area, then the Metro-wide franchisee will become subject to the requirements of subsection (E)(1) of this section in such area.

3. Cost Sharing.

a. In the event that the requirements set forth in subsection (E)(1) of this section are not met or an area is already served by another cable operator within the meaning of subsection (E)(2) of this section, a franchisee must, upon the request of a potential subscriber or subscribers, extend its cable television system based upon the following cost-sharing formula. The franchisee shall contribute an amount equal to the construction costs per quarter mile multiplied by the length of the extension in quarter miles, multiplied by a fraction where the numerator equals the number of actual potential subscribers per quarter mile at the time of the request and whose denominator equals 4.9 (provided, however, that where the numerator equals or exceeds 2.5, franchisee shall be obligated to extend without cost to the subscriber pursuant to subsection (E)(1)(b) of this section. The franchisee, at its discretion, can require the person(s) requesting service to bear the remainder of the total construction costs on a pro-rata basis. The franchisee may require that the potential subscribers pay such costs in advance, said payment to be held in escrow until construction is completed, no longer than six months after the request.

b. As used in this Section 6.08.050(E)(3), "construction costs" are defined as the actual turn-key cost to construct the entire extension including electronics, pole make-ready charges, and labor, but not the cost of the house drop. All extensions where the franchisee requires the potential subscriber to pay a share of the cost of extension shall be memorialized by contract. The contract shall provide that whenever a potential subscriber who did not originally contribute to the cost of extending the distribution line wants to obtain service by connecting to that line and the distribution line does not need to be extended further to serve the potential subscriber, the franchisee may require the potential subscriber to pay franchisee a pro-rata share of the extension cost. Such share shall be calculated using the above-described formula as a percentage of the total cost to the person(s) who originally paid to extend the line. When the franchisee connects the potential subscriber, a franchisee shall promptly tender payment to the person(s) who originally paid to extend the line the pro-rata payment the potential subscriber could have been required to pay. This requirement shall cease at the earlier of five years after the contract is signed or when the person(s) who originally paid to extend the line have received full reimbursement for their costs of extension. Franchisee shall maintain copies of such contracts and records of such construction costs for review by metropolitan Nashville in the event of a dispute between franchisee and a potential subscriber.

4. Commercial Account Line Extension Obligations. A franchisee shall have the obligation to extend its trunk and distribution line and make service available to non-residential, commercial businesses and buildings under the following terms and conditions:

a. A franchisee can require the building owner to bear the cost of post-wiring; provided, however, that in such circumstances, such inside wiring shall then be the property of the building owner.

b. A franchisee shall extend its trunk and distribution plant to any commercial business or building at no charge where no street cut is required.

c. On a franchisee's request, metropolitan Nashville will use its best efforts to make available at no cost metropolitan Nashville-owned under-street conduits or accessible rights-of-way to enable cable service to be provided to downtown commercial buildings.

d. As a condition to providing service to a multi-story commercial building, a franchisee may require the building owner to sign a contract and offer service individually to building tenants, with such contracts being based on a predetermined penetration of a minimum of forty percent.

5. House Drops/Installation. Except as federal regulations may otherwise require, the franchisee shall not assess any additional cost beyond its standard installation charge for service drops of one hundred fifty aerial feet (or seventy-five underground feet) or less unless the franchisee demonstrates to metropolitan Nashville's satisfaction that extraordinary circumstances justify a higher charge. Where a drop exceeds one hundred fifty aerial (or seventy-five underground) feet in length, a franchisee may charge the subscriber for the difference between franchisee's actual costs associated with installing a one hundred fifty foot aerial (or seventy-five foot underground) drop, and the franchisee's actual cost of installing the longer drop, provided that drop length shall be the shorter of (a) the actual length of installed drop or (b) shortest distance to the point where the franchisee would be required to extend its distribution system.

6. Location of Drops. Except as federal regulations may otherwise require, in any area where a franchisee would be entitled to install a drop aboveground, the franchisee will provide the homeowner the option to have the drop installed underground, but may charge the homeowner the difference between the actual cost of the aboveground installation and the actual cost of the underground installation.

7. Time for Extension. A franchisee must extend service to any person who requests it (a) within five working days of the request, where service can be provided by activating or installing a drop; (b) within thirty days of the request in any area otherwise meeting the requirements of subsection (E)(1) of this section, or where an extension of one-half mile or less is required; or (c) within six months where an extension of one-half mile or more is required. Metropolitan Nashville will grant extensions of the time periods specified herein for good cause shown, such as a franchisee's demonstration that pole make-ready work requires more than thirty days or that extension of service within thirty days in an area where another operator has ceased providing service under subsection (E)(2) of this section is not economically feasible.

F. System Tests and Inspections.

1. Tests. A franchisee shall perform all tests necessary to demonstrate compliance with the requirements of the franchise and other performance standards established by law or regulation. All tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of NCTA's Recommended Practices for Measurements on Cable Television Systems, or if no recent edition exists, such other appropriate manual as the parties may designate. A franchisee shall perform at least the following tests:

a. Preconstruction Quality Control on Cable and Equipment. A franchisee shall perform preconstruction quality tests on system components. In case of passive components, this will include testing a significant sample of devices to verify compliance with manufacturer's specifications.

i. All trunk and distribution cable shall be sweep-tested on the reels to verify compliance with manufacturer's specifications for frequency response and structural loss.

ii. All trunk and distribution amplifiers shall be bench-tested to verify compliance with manufacturer's specifications.

iii. No component shall be used in system which fails to meet manufacturer's specifications. A franchisee shall maintain in metropolitan Nashville records of all preconstruction tests, which metropolitan Nashville may inspect on reasonable notice.

b. Acceptance Tests. A franchisee shall perform acceptance tests on each construction area segment prior to subscriber connection. The tests shall demonstrate that the system components are operating as expected. Metropolitan Nashville has the option of witnessing the tests. The test results shall be submitted to metropolitan Nashville for review. The franchisee shall have the obligation, without further notice from metropolitan Nashville, to take corrective action if any segment is not operating as expected. Metropolitan Nashville will review the tests and approve each system segment for subscriber connection. Unless metropolitan Nashville determines test results are not adequate to demonstrate system compliance with the standards described above and objects within three working days of receipt of the tests, a segment will be deemed approved for subscriber connection.

c. Continuing Tests. The franchisee and metropolitan Nashville will jointly select locations at the extremities of system service area to install equipment to establish permanent test points. The test points shall be installed in locked enclosures so as to be accessible from ground level. The franchisee shall perform proof-of-performance tests at these locations as provided in Section 6.08.060(F). The number of required test points may be specified by metropolitan Nashville in accordance with federal law and with good engineering practice, as appropriate to ensure all subscribers are receiving adequate service.

2. Inspections during Construction. Metropolitan Nashville may conduct inspections of construction areas and subscriber installations, including to assess compliance with the construction and installation practices manual and design plans. The franchisee shall be notified of any violations found during the course of inspections. The franchisee must bring violations into compliance within thirty days of the date notice of violation is given, and must submit a report to metropolitan Nashville describing the steps taken to bring itself into compliance. Inspection does not relieve the franchisee of its obligation to build in compliance with all provisions of the franchise.

G. Use of Public Property.

1. Should the grades or lines of the public rights-of-way that a franchisee is authorized to use and occupy be changed at any time during the term of the franchise; the franchisee shall, if necessary, at its own cost and expense, relocate or change its system so as to conform with the new grades or lines.

2. Any alteration to the water mains, sewerage or drainage system or to any metropolitan government, state or other public structures in the public rights-of-way required on account of the presence of the system in the public rights-of-way shall be made at the sole cost and expense of the franchisee. During any work of constructing, operating or maintaining of the system, the franchisee shall also, at its own cost and expense, protect any and all existing structures belonging to metropolitan Nashville and any other person. All work performed by the franchisee pursuant to this section shall be done in the manner prescribed by metropolitan Nashville or other officials having jurisdiction therein.

H. Use of Private Property. No cable, line, wire, amplifier, converter or other piece of equipment owned by the franchisee shall be installed by the franchisee without first securing the written permission of the owner of any property involved. If such permission is later revoked, whether by the original or a subsequent owner, the franchisee shall remove forthwith any of its equipment which is both visible and movable and promptly restore the property to its original condition.

I. Interference with Public Projects. Nothing in this chapter shall be in preference or hindrance to the right of metropolitan Nashville and any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description, and should the system in any way interfere with the construction, maintenance or repair of such public works or public improvements, a franchisee shall, at its own cost and expense, protect or relocate its system, or part thereof, as reasonably directed by any metropolitan government official, board, authority, commission or public service corporation.

J. Publicizing Proposed Construction Work. A franchisee shall publicize proposed construction work (1) by causing written notice of such construction work to be delivered to metropolitan Nashville at least one week prior to commencement of work; and (2) by notifying those persons most likely to be affected by the work at least one

day in advance in at least two of the following ways: by telephone, in person, by mail, by distribution of flyers to residences, by publication in local newspapers, or in any other manner reasonably calculated to provide adequate notice. In addition, before entering onto any person's property, a franchisee shall contact the property owner or (in the case of residential property) the resident at least one day in advance. If a franchisee must enter premises, it must schedule an appointment at the convenience of the owner or resident.

K. System Maintenance.

1. Interruptions to be Minimized. A franchisee shall schedule maintenance so that activities likely to result in an interruption of service are performed during periods of minimum subscriber use of the system.

2. Maintenance Practices Subject to Regulation. Metropolitan Nashville shall review maintenance practices at regular intervals and may waive requirements or adopt additional requirements as reasonable to ensure the system remains capable of providing high-quality service.

3. Maintenance Practices. A franchisee shall (a) use replacement components of good and durable quality, with characteristics better or equal to replaced equipment; and (b) follow the more stringent of franchise maintenance standards, industry maintenance standards or corporate maintenance standards.

4. Lines Kept in Good Repair. All lines, equipment and connections in, over, under and upon the streets and public ways and private property in metropolitan Nashville, wherever situated or located, shall at all times be kept and maintained in a safe and suitable condition, and in good order and repair.

L. Continuity of Service.

1. It is the right of all subscribers in a franchisee's franchise area to receive all available services from the franchisee as long as their financial and other obligations to the franchisee are satisfied.

2. A franchisee shall ensure that all subscribers receive continuous uninterrupted service. At metropolitan Nashville's request, a franchisee shall operate its system for a temporary period (the "transition period") following the termination, sale, or transfer of its franchise as necessary to maintain service to subscribers, and shall cooperate with metropolitan Nashville to assure an orderly transition from it to another franchisee. The transition period shall be no longer than the reasonable period required to select another franchisee and build a replacement system, and shall not be longer than thirty-six months, unless extended by metropolitan Nashville for good cause. During the transition period, the franchisee will continue to be obligated to comply with the terms and conditions of its franchise agreement and applicable laws and regulations.

3. If a franchisee abandons its system during the franchise term, or fails to operate its system in accordance with the terms of this Section 6.08.050(L) during any transition period, metropolitan Nashville, at its option, may operate the system, designate another entity to operate the system temporarily until the franchisee restores service under conditions acceptable to metropolitan Nashville or until the franchise is revoked and a new franchisee selected by metropolitan Nashville is providing service, or obtain an injunction requiring the franchisee to continue operations. If metropolitan Nashville is required to operate or designate another entity to operate the cable system, the franchisee shall reimburse metropolitan Nashville or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the cable system.

4. For purposes of subsection (L)(3) of this section, a franchisee shall be deemed to have abandoned its system if the system is abandoned within the meaning of applicable law or if either of the following conditions is satisfied:

a. The franchisee fails to provide cable service in accordance with its franchise over a substantial portion of the franchise area for ninety-six consecutive hours, unless metropolitan Nashville authorizes a longer interruption of service; or

b. The franchisee, for any period, wilfully and without cause refuses to provide cable service in accordance with its franchise over a substantial portion of the franchise area. (Ord. 95-1368 § 2 (part), 1995)

6.08.060 System facilities, equipment, and services.

A. Compliance with Franchise Agreement. In addition to satisfying such requirements as may be established through the application process and incorporated in its franchise agreement, every franchisee shall comply with the conditions set forth in this Section 6.08.060, except as prohibited by federal law.

B. Provision of Service. Unless otherwise specified in a franchise agreement, after cable service has been established by activating trunk distribution cable for an area specified in a franchise agreement, a franchisee shall provide cable service to any household requesting cable service within that area, including each multiple-dwelling unit in that area, except for multiple-dwelling units to which it cannot legally obtain access.

C. Full Service to Municipal Buildings. A franchisee shall install, at no charge, at least one service outlet at all city buildings within the franchise area, and shall charge only its time and material costs for any additional service outlets to such facilities. The franchisee shall provide full basic cable service and the next level of cable programming service tier to all outlets in such buildings free of

charge; provided, however, that franchisee shall not be required to provide converters free of charge.

D. Leased Access Requirement. A franchisee shall provide leased access channels as required by federal law.

E. Technical Standards.

1. Any cable system within metropolitan Nashville shall meet or exceed the technical standards set forth in 47 C.F.R. Section 76.601 and any other applicable technical standards, including any such standards as hereafter may be amended or adopted by metropolitan Nashville in a manner consistent with federal law.

2. A franchisee shall use equipment generally used in high-quality, reliable, modern systems of similar design, including, but not limited to, back-up power supplies at the fiber nodes and headend capable of providing power to the system for the length of any power outage, and modulators, antennae, amplifiers, and other electronics that permit and are capable of passing through the signal received at the headend with minimal alteration or deterioration. This obligation shall include the obligation to install equipment to retransmit in stereo, satellite and local broadcast signals provided in stereo. The obligation to provide backup power supplies requires the franchisee to install equipment that will (a) cut in automatically on failure of commercial utility AC power, (b) revert automatically to commercial power when it is restored, (c) prevent the standby power source from powering a "dead" utility line, and (d) alert the franchisee's staff when the backup power supply cuts in.

3. A franchisee shall not design, install, or operate its facilities in a manner that will interfere with the signals of any broadcast station, the facilities of any public utility, the cable system of another franchisee, or individual or master antennae used for receiving television or other broadcast signals.

F. Proof of Performance Tests.

1. At least once every six months, unless otherwise limited by a franchise agreement or FCC rules, a franchisee shall perform proof of performance tests at the test points designated pursuant to Section 6.08.050(F)(1)(c) and at other points where system user complaints indicate tests are warranted. Franchisee shall also perform such other tests as may be specified in a franchise agreement, designed to demonstrate compliance with this section, the franchise agreement, and FCC requirements. The franchisee shall provide metropolitan Nashville ten days' advance written notice when a proof-of-performance or other required test is scheduled so that metropolitan Nashville may have an observer present. Metropolitan Nashville shall have the right to inspect the cable system during and after its construction to ensure compliance with this section, a franchise agreement, and applicable provisions of local, state and federal law, and based on the results of such inspection, may require the franchisee to perform additional tests based on metropolitan Nashville's investigation of cable system performance or on subscriber complaints.

2. A written report of test results shall be filed with metropolitan Nashville within seven days of each test. If the location fails to meet performance specifications, the franchisee, without requirement of additional notice or request from metropolitan Nashville, shall take corrective action, retest the locations and advise metropolitan Nashville of the action taken and results achieved.

G. Interconnection.

1. A franchisee shall design its system so that it may be interconnected with any or all other cable television systems or similar communications systems in the area. Interconnection of systems may be made by direct cable connection, microwave link, satellite or other appropriate methods.

2. Upon receiving a request from metropolitan Nashville to interconnect, the affected franchisee(s) may provide comments to metropolitan Nashville on the matter. After reviewing any such comments, metropolitan Nashville may direct the affected franchisee(s) to initiate negotiations with the other affected system or systems or franchisee or franchisees so that costs may be shared equitably for construction, operation, and any programming costs of the interconnection link. Upon receiving such a directive, the affected franchisee(s) shall immediately initiate such negotiations in good faith.

3. The council may grant reasonable extensions of time to interconnect or rescind its request to interconnect upon petition by any affected franchisee to the council. The council shall grant the request if it finds that the affected franchisee(s) have negotiated in good faith and the cost of interconnection would cause an unreasonable increase in subscriber rates.

4. No interconnection shall take place without prior approval of the council. A franchisee in seeking approval for interconnection shall demonstrate that all signals to be interconnected will comply with FCC technical standards for all classes of signals and will result in no more than a low level of distortion.

5. Franchisees shall cooperate with any interconnection corporation, regional interconnection authority, state or federal regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of communications systems beyond the boundaries of metropolitan Nashville.

H. Integration of Advancements in Technology.

1. In addition to such upgrades as may be required under a franchise agreement, it is the responsibility of a

franchisee to periodically upgrade its cable system to integrate advancements in technology as may be required to meet the needs and interests of the community in light of the costs thereof. It is recognized that subscribers in metropolitan Nashville have an especially strong interest in a system design that will eliminate the need for set-top converters and/or otherwise permit subscribers to fully utilize the capabilities of consumer electronic equipment while receiving cable service.

2. No franchisee shall install equipment to provide basic service and the next tier of cable programming services (not including premium or pay-per-view programming) in a compressed or digitized form unless otherwise authorized by metropolitan Nashville. Metropolitan Nashville will not unreasonably withhold consent to install such equipment, but may adopt requirements as necessary to protect the public interest, including by ensuring that channels, facilities, and equipment for public, educational, and government use will remain accessible to subscribers and users.

I. System Design Review Process. Upon request and reasonable advance notice, a franchisee shall provide a detailed system design and construction plan (where applicable), available for review by metropolitan Nashville at the local office of the franchisee, which shall include at least the following elements:

1. Design type, trunk and feeder design, and number and location of hubs or nodes;

2. Distribution system-cable, fiber, and equipment to be used;

3. Plans for standby power at headend;

4. Longest amplifier cascade in system (number of amplifiers, number of miles, type of cable/fiber);

5. Design maps and tree trunk maps for the system.

The system design will be shown on maps of industry standard scale using standard symbology, and shall depict all electronic and physical features of the cable plant. Metropolitan Nashville may take any appropriate action it is entitled to take under a franchise agreement, this chapter, or other applicable law if it believes the design plan fails to satisfy or is likely to fail to satisfy the franchisee's obligations. Metropolitan Nashville's review does not excuse any nonperformance under a franchise agreement, this chapter or other applicable law.

J. Emergency Alert System. A franchisee shall install and thereafter maintain for use by metropolitan Nashville an emergency alert system ("EAS"). This EAS shall be remotely activated by telephone and shall allow a representative of metropolitan Nashville to override the audio on all channels and the video on at least one channel on the franchisee's system in the event of a civil emergency or for reasonable tests. Metropolitan Nashville will provide reasonable notice to a franchisee prior to any test use of the EAS. A franchisee shall comply with all applicable FCC regulations concerning emergency alert capability.

K. Public, Educational and Governmental Access Channels. A franchisee shall provide channels and facilities for public, educational and/or governmental use as provided in its franchise agreement. (Ord. 95-1368 § 2 (part), 1995)

6.08.070 Operation and reporting provisions.

A. Open Books and Records.

1. Metropolitan Nashville shall have the right to inspect and copy at any time during normal business hours at franchisee's local office or at such location as metropolitan Nashville may designate, all books, receipts, maps, plans, financial statements, contracts, service complaint logs, performance test results, records of requests for service, computer records, codes, programs, and disks or other storage media and other like material that are relevant to monitor compliance with the terms of this chapter, a franchise agreement, or applicable law. This includes not only the books and records of a franchisee, but any books and records metropolitan Nashville deems relevant held by an affiliate, a cable operator of the cable system, or any contractor, subcontractor or any person holding any form of management contract for the cable system. The Franchisee is responsible for collecting the information and producing it at the location specified above (or at some other location at franchisee's expense as provided in subsection F of this section, and by accepting its franchise it affirms that it can and will do so;

2. A franchisee shall maintain separate financial records governing its operations in the franchise area, that shall contain the following information:

a. The true and entire cost of construction, of equipment, of maintenance and of the administration and operation thereof; the amount of stock issued, if any; the amount of cash paid in, the number and par value of shares, the amount and character of indebtedness, if any; the rate of taxes, the dividends declared; the character and amount of all fixed charges; the allowance, if any, for interest, for wear and tear or depreciation; all amounts and sources of income,

b. The amount collected annually from the metropolitan Nashville treasury, if any, and the character and extent of the service rendered therefor,

c. The amount collected annually from other users and the character and extent of the service rendered therefor to them;

3. Access to a franchisee's records shall not be denied by the franchisee on the basis that said records contain "confidential" or "proprietary" information. Refusal to

provide information required herein to metropolitan Nashville shall be grounds for revocation. All such information received by metropolitan Nashville and explicitly designated by franchisee as "confidential" or "proprietary" shall remain confidential insofar as permitted by applicable state and federal law. To the extent permitted by applicable law, metropolitan Nashville shall return copies of materials designated "confidential" or "proprietary" to franchisee upon conclusion of metropolitan Nashville's use thereof, or of any dispute between metropolitan Nashville and the franchisee relating thereto;

4. The franchisee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations.

B. Communication with Regulatory Agencies. A franchisee shall file with metropolitan Nashville in a form acceptable to metropolitan Nashville copies of all petitions, applications, and communications and reports, submitted or received by the franchisee, either to or from the FCC, the Security and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over any matter affecting operation of the franchisee's system in metropolitan Nashville. This material shall be submitted to metropolitan Nashville at the time it is filed or within ten days of the date it is received or filed by franchisee. Public access to such reports received by metropolitan Nashville shall not be denied.

C. Reports.

1. Annual Report. No later than ninety days after the end of its fiscal year, a franchisee shall submit a written report to the CATV special committee, in a form directed by the CATV special committee, which shall include the following information pertaining to the franchisee and, as applicable, the operations of the franchisee and any of its affiliates in the franchise area:

a. A summary of the previous year's activities in development of the cable television system, including but not limited to descriptions of services begun or dropped, the number of subscribers gained or lost for each category of service, the number of pay units sold, the amount collected annually from other users of the system and the character and extent of the services rendered to such users,

b. A summary of complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions,

c. An annual statement of gross revenues and franchise fee as defined elsewhere in this chapter in the form illustrated herein prepared by its chief financial officer and certified by its chief financial officer and chief operating officer to be in accordance with this section and to be true, correct and complete.

The statement of gross revenues and franchise fee must be examined by an Independent certified public accountant (CPA) approved by the finance director of the metropolitan government of Nashville and Davidson County. The CPA will prepare a report giving an opinion on the Statement of gross revenues and franchise fee. The CPA's opinion must be generally in the form illustrated below and specifically state that the statement reflects gross revenues and franchise fee calculated in conformity with this section:

(i)Statement of Gross Revenues and Franchise Fee For the Fiscal Year Ended _____

In accordance with Ordinance No. _____ dated _____ (hereinafter Franchise Agreement) I/we have prepared the following Statement of Gross Revenues and Franchise Fee for the fiscal year ended _____.

Gross Revenue $$$$$

Franchise Fee Rate %

Franchise Fee Due $$$$$

I certify that the information contained in this Statement of Gross Revenues and Franchise Fee is in accordance with the Franchise Agreement and is true, correct and complete to the best of my knowledge.

_____

_____

Chief Financial Officer Chief Operating Officer

Date: _____

(ii) INDEPENDENT ACCOUNTANT'S REPORT

We have examined the accompanying (Franchisee) Cable Statement of Gross Revenues and Franchise Fee for the year beginning _____ and ending _____ which will be provided to the Director of Finance of The Metropolitan Government of Nashville and Davidson County, Tennessee. (Franchisee) management is responsible for the Statement of Gross Revenue and Franchise Fee. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the (Franchisee) Statement of Gross Reve-

nues and Franchise Fee and performing such other procedures, as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, the Statement of Gross Receipts and Franchisee Fee for the year ending _____ referred to above, presents, in all material respects, the calculation of the Gross Revenues and Franchise Fee for the year in conformity with section 6.08.070 of the Metropolitan Code of Laws.

d. A current annual statement of all capital expenditures, including the cost of construction and of equipment,

e. A statement of construction plans for the next two years,

f. A statement of the total miles of plant in service and the miles of plant construction (if any) during the preceding year,

g. A report showing the number of service calls received by type during the prior year, and the percentage of service calls compared to the subscriber base by type of complaint,

h. A report showing the number of outages and service degradations for the prior year, and identifying separately each planned outage, the time it occurred, its duration, and the estimated area and number of subscribers affected; each unplanned outage or service degradation, the time it occurred, its estimated duration and the estimated area and the number of subscribers affected; and the total hours of outages and service degradations as a percentage of total hours of cable system operation,

i. An ownership report, indicating all persons who at any time during the preceding year did control or benefit from an interest in the franchise of five percent or more,

j. An annual list of officers and members of the board of directors of the franchisee and any affiliates,

k. An organizational chart showing all corporations or partnerships with more than a five percent interest ownership in the franchisee, and the nature of that ownership interest (limited partner, general partner, preferred shareholder, etc.); and showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified and so on until the ultimate corporate and partnership interests are identified,

l. An annual report of each entity identified in subsection k of this section which issues an annual report, and

m. Such other relevant information as the department of information services or the CATV special committee may direct;

2. Opinion Survey Report. The franchisee shall prepare and submit, by August 31st of each third year of its franchise term, the results of an opinion survey which shall identify the degree of satisfaction among subscribers with its services and what franchisee perceives to be the cable-related community needs and interests. The opinion survey shall be conducted in conformance with such requirements, including supervision, as the department of information services and the CATV special committee may direct;

3. Special Reports. Franchisees shall deliver the following special reports:

a. Any notice of deficiency, forfeiture, or other document issued by any state or federal agency instituting any investigation or civil or criminal proceeding regarding the cable system, the franchisee, or any affiliate of the franchisee, to the extent the same may affect or bear on operations in metropolitan Nashville. By way of illustration and not limitation, a notice that an affiliate that has a management contract for the cable system was not in compliance with FCC EEO requirements would be deemed to affect or bear on operations in metropolitan Nashville. This material shall be submitted to metropolitan Nashville at the time it is filed or within five days of the date it is received,

b. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the franchisee or by any partnership or corporation that owns or controls the franchisee directly or indirectly. This material shall be submitted to metropolitan Nashville at the time it is filed or within five days of the date it is received,

c. Technical tests required by metropolitan Nashville as specified in this chapter and the franchise agreement shall be submitted to metropolitan Nashville promptly upon completion of such tests;

4. General Reports. Each franchisee shall prepare and furnish to metropolitan Nashville, at the times and in the form prescribed by the department of information services and the CATV special committee, such reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of metropolitan Nashville in connection with this chapter.

D. Records Required.

1. A franchisee shall at all times maintain:

a. Records of all service requests and complaints (other than those relating to programming content) received for a period of one year after receipt. The term "complaints" as used herein and throughout this chapter refers to complaints about any aspect of the cable system or franchisee's operations, including, without limitation,

complaints about employee courtesy. Complaints recorded may not be limited to complaints requiring an employee service call,

b. A full and complete set of plans, records, and "as built" maps showing the exact location of all system equipment installed or in use in metropolitan Nashville, exclusive of subscriber service drops,

c. A comprehensive record of all of franchisee's personnel transactions, and its utilization of contractors, subcontractors, vendors, and suppliers by race and sex for the previous three years,

d. Records of outages, indicating date, duration, area, and the estimated number of subscribers affected, type of outage, and cause for the previous three years,

e. Records of service calls for repair and maintenance indicating the date and time service was required, the date of acknowledgement and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved for the previous three years,

f. Records of installation/reconnection and requests for service extension, indicating date of request, date of acknowledgment, and the date and time service was extended for the previous three years,

g. A public file showing its plan and timetable for construction of the cable system;

2. Metropolitan Nashville may require additional information, records, and documents from time to time.

E. Performance Evaluation.

1. The CATV special committee may, at its discretion, hold periodic performance evaluation sessions. All such evaluation sessions shall be open to the public, and announced in a newspaper of general circulation;

2. Topics that may be discussed at any evaluation session may include, but are not limited to, system performance and construction, franchisee compliance with this chapter and a franchise agreement, customer service and complaint response, subscriber privacy, services provided, programming offered, service rate structures, franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions;

3. During the review and evaluation by the CATV special committee, a franchisee shall fully cooperate with the CATV special committee and shall provide such information and documents as the CATV special committee may need to reasonably perform its review.

F. Voluminous Materials. If any books, records, maps or plans, or other requested documents are too voluminous, or for security reasons cannot be copied and moved, then a franchisee may request that the inspection take place at a location other than its local office, provided that (1) the franchisee must make necessary arrangements for copying documents selected by metropolitan Nashville after review; and (2) the franchisee must pay all travel and additional copying expenses incurred by metropolitan Nashville in inspecting those documents or having those documents inspected by its designee. Any such expenses paid by the franchisee are requirements or charges incidental to the enforcing of the franchise within the meaning of 47 U.S.C. Section 542(g)(2)(D).

G. Retention of Records—Relation to Privacy Rights. Each franchisee shall take all steps required, if any, to ensure that it is able to provide metropolitan Nashville all information which must be provided or may be requested under this chapter or a franchise agreement, including by providing appropriate subscriber privacy notices. Nothing in this section shall be read to require a franchisee to violate 47 U.S.C. Section 551. Each franchisee shall be responsible for redacting any data that federal law prevents it from providing to metropolitan Nashville. Except as otherwise provided herein, records shall be kept for at least five years. (Ord. BL2004-157 § 1, 2004; Ord. 95-1368 § 2 (part), 1995)

6.08.080 Regulatory structure.

A. CATV Special Committee.

1. There is established by this chapter a CATV special committee consisting of seven members, who shall be appointed by the metropolitan mayor. The appointments shall be subject to confirmation by the council. The members of the CATV special committee shall serve a term of three years, the first such terms to commence on March 1, 1982.

2. No member of the CATV special committee shall have an interest in any company or affiliate engaged in cable television or in application for a franchise.

3. The CATV special committee shall have the right to call upon, with expectation of reasonable cooperation, any agency of the metropolitan government to assist it in its findings of fact and recommendations to council as required by this chapter.

4. Except to the extent otherwise specifically provided in this chapter, the CATV special committee shall have the power and authority to review and evaluate any matter relating to the operation of any franchise, and the performance of any franchisee, that may be granted to metropolitan Nashville under provisions of this chapter as it deems proper within its power under the Charter of The Metropolitan Government of Nashville and Davidson County and the general laws of Tennessee; provided, however, that the council shall have exclusive and final authority to grant and revoke franchises.

5. In addition to its other duties, the CATV special committee shall also be responsible for reviewing and regulating subscriber rates for basic service, in accordance with Section 6.08.100 of this chapter, and any rate regulations adopted by the committee or metropolitan Nashville.

B. Hearings.

1. The hearing panel for any hearing required or permitted under the provisions of this chapter shall be the CATV special committee. The CATV special committee shall first promulgate its organizational structure and the rules applicable to the conduct of such hearing, and they shall be filed with the metropolitan clerk. When a determination is made respecting any matter which may be the subject of a hearing, such determination shall be communicated by the CATV special committee in writing in detail to the council at the earliest possible time; copies thereof shall be furnished to the franchisee. At such hearings, the franchisee shall be given full opportunity to make a presentation and to be heard through witnesses and counsel and any other person representing the public shall also be heard. Metropolitan Nashville, through its staff (as defined in Section 6.08.040(C)(2)(a) hereof), shall also be permitted to make a presentation. The recommendations, transcripts and presentation materials shall be transmitted to the council as soon as possible but within any specific time limitations established herein.

2. A determination for a hearing may be made and hearing or hearings undertaken on any matter concerning this chapter or franchise grants made under the chapter by the chairman of the CATV special committee, by any three members of said CATV special committee, by a resolution of the council, or by franchisee.

3. Any such call for hearings must be properly made to the chairman of the CATV special committee and a copy sent to the metropolitan clerk. Both these request documents must be made with registered letter by registry receipt and the hearing must convene within ten days after receipt of the request by the metropolitan clerk unless the time is modified by the chairman of the special committee or otherwise specified in this chapter.

C. Department of Information Systems.

1. Intent. It is the intent of metropolitan Nashville to provide for the day-to-day administration and enforcement of the provisions of this franchise by delegating this responsibility to the department of information systems and its division, the office of telecommunications, as provided in Article 2 of the Metro code.

2. Appeals. Should the franchisee become dissatisfied with any material decision or ruling of the department of information services pertaining to cable communication matters, the franchisee may bring the matter to CATV special committee. The special committee may accept, reject, or modify the decision of the department of information services. If the franchisee is dissatisfied with the decision of the special committee relating to any matter other than the grant or denial of a franchise, franchise renewal application or franchise transfer application, the special committee's decision shall be final, and the franchisee may pursue such other remedies as are available, including the bringing of action in any court of competent jurisdiction. If the franchisee is dissatisfied with the decision of the special committee relating to the grant or denial of a franchise, franchise renewal or franchise transfer application, the franchisee may appeal the matter to the council, which may accept, reject or modify the decision of the special committee. If the franchisee is dissatisfied with the results of such appeal, the franchisee may pursue such other remedies as are available, including the bringing of action in any court of competent jurisdiction.

D. Auditing—Finance Director Duties. The director of finance or his duly authorized agent shall be responsible for auditing of the books, records and accounts of the franchisee for the purpose of determining gross revenues and also for the purpose of ascertaining franchisee's compliance with this chapter or its franchise agreement, and for ascertaining franchisee's financial operations relating to fees charged for subscriber's service whenever such matters are presented to the special committee or the council for consideration or review.

E. Community Access Corporation.

1. It is the intent of metropolitan Nashville to ensure that the public access channels are governed by an independent, nonprofit corporation, termed the "Community Access Corporation" (CAC), such that these channels may be free of censorship, open to all residents of metropolitan Nashville and available for all forms of public expression, community information and debate on public issues.

2. The incorporators of the CAC shall consist of seven qualified people, each of whom shall be appointed by the metropolitan county mayor and confirmed by the metropolitan county council. No agent, employee or representative of a franchisee shall be qualified to serve as an incorporator of the CAC. In no event shall membership of the CAC be limited to the subscribers of cable television.

3. Within sixty days after appointment and confirmation, the incorporators of the CAC shall prepare and submit to the metropolitan county council for approval by resolution on the advice of the CATV special committee a proposed charter for the CAC as a not-for-profit corporation under the general corporation laws of the state of Tennessee. The charter for the CAC shall be structured so that it will meet the appropriate criteria for a nonprofit organization under the federal Internal Revenue Service

Code and rules and shall include, but not be limited to, the following:

a. That the incorporators of the CAC shall serve as the first board of directors of the CAC from and after the date of incorporation of the CAC and for a period of one year thereafter or until their successors have been duly appointed, confirmed and/or elected and qualified;

b. That no later than six months after the date of incorporation of the CAC, the board of directors of the CAC shall be composed of thirteen qualified people, each of whom shall serve for a period designated in the bylaws of the CAC or until their successors have been duly appointed, confirmed and/or elected and qualified. Seven of the members of the board of directors of the CAC shall be appointed by the metropolitan county mayor and confirmed by the council. Six of the members of the board of directors of the CAC shall be elected from and by the general membership of the CAC as designated in the bylaws of the CAC. At least one of the members of the board of directors of the CAC elected by the membership shall be a resident of each of the four state senatorial districts of the metropolitan government, and not more than two of the members shall be residents of the same metropolitan government councilmanic district. No agent, employee or representative of a franchisee shall be qualified to serve as a member of the board of directors of the CAC;

c. That the functions of the CAC shall include, but not be limited to, the following:

i. Responsibility for program production for and management of the public access channel(s) on all cable systems, and all other channels as may in the future be designated for community-based programming. The day-to-day operation of the public access channel(s) shall be the responsibility of the CAC,

ii. To assure that the public access channels are made available to all residents of the franchise area on a nondis-criminatory, first-come, first-served basis,

iii. To assure that no censorship or control over program content of the public access channel(s) exist, except as necessary to comply with FCC prohibition of material that is obscene, contains commercial advertising or conducts a lottery,

iv. To devise, establish and administer all rules, regulations and procedures pertaining to the use and schedule of the public access channels,

v. To prepare, in conjunction with the franchisee, such regular or special reports as may be required or desirable,

vi. To hire and supervise staff of the CAC,

vii. To make all purchases of materials and equipment that may be required,

viii. To develop additional sources of funding, such as foundation or federal or state grants, to further community programming,

ix. To perform such other functions relevant to the public access channel(s) as may be appropriate.

4. After the metropolitan county council approves the proposed charter for the CAC, the proposed charter shall be filed with the Secretary of State of the state of Tennessee. After same has been issued by the Secretary of State of the state of Tennessee, it shall be recorded in the office of the registrar of Davidson County. The director of the department of metropolitan finance shall advance the necessary filing and recording fees.

5. If a franchisee and the CAC become involved in a dispute of any kind which cannot be resolved between them, either party shall have the right to submit the issue for resolution to the CATV special committee under rules and procedures to be adopted by the CATV special committee. If either party is dissatisfied with the decision of the CATV special committee, they shall have the right to file an appeal of that decision to a court of competent jurisdiction in Davidson County.

6. The director of finance or his duly authorized agent shall, not less than annually and at such other time as he may consider necessary, or upon request of the CATV special committee, audit the books, records and accounts of the CAC to ascertain whether expenditures are within the funds appropriated pursuant to this section. The CAC shall allow the director of finance or his duly authorized agent full and complete access to any of its books, records, accounts, financial statements and other like material for purposes of the audits. A copy of the audit shall be filed with the metropolitan clerk.

F. Educational Access Corporation.

1. It is the intent of metropolitan government to ensure that the educational access channel(s) are governed by an independent, nonprofit corporation, termed the "Metropolitan Educational Access Corporation" (MEAC), such that these channels may be free of censorship, partisan poli-tics and available for all forms of public educational pro-gramming for persons of all ages including instructional programming.

2. The incorporators of the MEAC shall consist of seven people, each of whom shall be appointed by the metropolitan county mayor and confirmed by the metropolitan county council. No agent, employee or representative of a franchisee, nor any officer or employee of the metropolitan government shall be qualified to serve as an incorporator of the MEAC. In no event shall membership of the MEAC be limited to subscribers of cable television.

3. Within sixty days after appointment and confirma-tion, the incorporators of the MEAC shall prepare and submit to the metropolitan county council for approval by resolution on the advice of the CATV special committee a proposed charter for the MEAC as a not-for-profit corporation under the general corporation laws of the state of Tennessee. The charter for the MEAC shall be structured so that it will meet the appropriate criteria for a nonprofit organization under the federal Internal Revenue Code and rules and shall include, but not be limited to, the following:

a. That the incorporators of the MEAC shall serve as the first board of directors of the MEAC from and after the date of incorporation of the MEAC and for a period of one year thereafter or until their successors have been duly appointed and confirmed;

b. That no later than six months after the date of incorporation of the MEAC, the board of directors of the MEAC shall be composed of seven qualified persons, each of whom shall serve for a term of three years or until their successors have been duly appointed and confirmed. The members of the board of directors of the MEAC shall be appointed by the metropolitan county mayor and confirmed by the council. Not more than two of the members shall be residents of the same metropolitan councilmanic district. No agent, employee or representative of a franchisee, nor any officer or employee of the metropolitan government shall be qualified to serve as a member of the board of directors of the MEAC. The terms of the initial members of the board of directors shall be staggered, with three members being initially appointed for a one year term, two members being initially appointed for a two year term and two members being initially appointed for a three year term. Vacancies occurring during the term of any member shall be filled by the same method as the appointment of the member in whose position the vacancy occurs;

c. That the functions of the MEAC shall include, but not be limited to, the following:

i. Responsibility for program production for and management of the educational access channel(s) on all cable systems and the day-to-day operation of the educational access channel(s);

ii. To devise, establish and administer all rules, regulations and procedures pertaining to the use and schedule of the educational access channel(s);

iii. To hire and supervise staff of the MEAC;

iv. To make all purchases of materials and equipment that may be required;

v. To develop additional sources of funding, such as foundation or federal or state grants, to further educational programming.

vi. To develop and promote the use of such educational access channel(s) by all schools, colleges, universities and other organization with educational missions within the franchise area; and

vii. To perform such other functions relevant to the educational access channel(s) as may be appropriate.

4. After the metropolitan county council approves the proposed charter of the MEAC, the proposed charter shall be filed with the Secretary of State of the state of Tennessee. After same has been issued by the Secretary of State, it shall be recorded in the office of the registrar of Davidson County. The director of the department of metropolitan finance shall advance the necessary filing and recording fees.

5. The MEAC shall allow the director of finance or his duly authorized agent full and complete access to any of its books, records, accounts, financial statements and other like material for the purpose of auditing in such manner as he may deem appropriate. The MEAC shall annually obtain an audit of its financial statements by a qualified and independent accounting firm approved by the director of finance. (Ord. 2001-840 § 1, 2001: Ord. 95-1368 § 2 (part), 1995)

6.08.090 Consumer protection and customer service.

A. General Provisions. This section sets forth the initial customer service standards that a franchisee must satisfy. In addition, the franchisee shall at all times satisfy any additional or stricter requirements established by federal or state law or regulation, or by this chapter or other applicable local law, as the same may be amended from time to time. Similarly, nothing in this section in any way relieves the franchisee of its obligation to comply with applicable consumer protection laws.

B. Telephone and Office Availability.

1. Each franchisee shall maintain an office at a convenient location in metropolitan Nashville that shall be open during the hours of eight a.m. to six p.m. Monday through Friday and eight a.m. to two p.m. on Saturday to allow subscribers to request service, pay bills, and conduct other business. Each franchisee shall perform service calls during at least the hours eight a.m. to six p.m., Monday through Saturday, provided that a franchisee shall respond to outages twenty-four hours a day, seven days a week. Franchisee shall perform installations and disconnects Monday through Saturday during at least the hours eight a.m. to six p.m. between April and September, and eight a.m. to four p.m. between October and March. Each franchisee shall establish a publicly listed local toll-free telephone number. The phone must be answered by customer service representatives at least Monday through Saturday,

eight a.m. to eight p.m., for the purpose of receiving requests for service, inquiries, and complaints from subscribers; after those hours a franchisee shall arrange for the phone to be answered so that customers can register complaints and report service problems on a twenty-four hour per day, seven day per week basis, and so that the franchisee can respond to service outages as required herein.

2. Telephone answering time shall not exceed thirty seconds or four rings, and the time to transfer the call to a customer service representative (or to an automated response unit where that is sufficient to satisfy the customer's inquiry or request), including hold time, shall not exceed an additional thirty seconds. This standard shall be met ninety-five percent of the time, measured quarterly. Under normal operating conditions customer will receive a busy signal less than three percent of the time. When the business office is closed, an answering machine or service capable of receiving and recording service complaints and inquiries shall be employed. The after-hours answering service shall comply with the same telephone answer time standard set forth in this Section 6.08.090(B) (2). As part of the annual report required by Section 6.08.070(C)(1), a franchisee shall supply statistical data to verify it has met the standards set forth herein.

3. A franchisee must hire sufficient staff so that it can adequately respond to customer inquiries, complaints, and requests for service in its office, over the phone, and at the subscriber's residence.

C. Scheduling Work.

1. All appointments for service, installation, or disconnection shall be specified by date. Each franchisee shall offer a choice of time blocks, which shall not exceed four hours in length. Franchisee shall also, upon request, schedule service installation calls outside normal business hours, for the express convenience of the customer. If at any time an installer or technician believes it impossible to make a scheduled appointment time, an attempt to contact the customer will be made prior to the time of appointment and the appointment rescheduled at a time convenient to the customer.

2. If a franchisee misses its appointment in a four-hour time block, it shall offer the customer a specific time at which the work will be done. Subscribers who have experienced two missed appointments due to the fault of a franchisee shall receive installation free of charge (or such other compensation to which the subscriber agrees), if the appointment was for installation. If an installation was to have been provided free of charge, or for other appointments, the subscriber shall receive three months of the most widely subscribed-to service tier free of charge (or such other compensation to which the subscriber agrees).

3. With regard to mobility-limited customers, upon subscriber request, each franchisee shall arrange for pickup and/or replacement of converters or other franchisee equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

4. A franchisee shall respond to requests for service, repair, and maintenance within thirty-six hours, or prior to the end of the next business day, whichever is earlier. A franchisee shall respond to all other inquiries (including billing inquiries) within five business days of the inquiry or complaint.

5. Installations made within one hundred twenty-five feet of the existing distribution system shall be completed within seven business days after the order is placed. Repairs and maintenance for service interruptions and other repairs not requiring in-unit work must be completed within twenty-four hours. Work on all other requests for service must be begun by the next business day after notification of the problem, and, absent exceptional circumstances, must be completed within three days from the date of the initial request, except installation requests, provided that a franchisee shall complete the work in the shortest time possible where, for reasons beyond the franchisee's control, the work could not be completed in those time periods even with the exercise of all due diligence; the failure of a franchisee to hire sufficient staff or to properly train its staff shall not justify a franchisee's failure to comply with this provision. Except as federal law requires, no charge shall be made to the subscriber for this service, except for the cost of repairs to the franchisee's equipment or facilities where it can be documented that the equipment or facility was damaged by a subscriber.

6. Franchisee shall not cancel a service or installation appointment with a customer after the close of business on the business day preceding the appointment.

7. The standards of paragraphs (4) and (5) of this subsection C of this section shall be met at least ninety-five percent of the time, measured on a quarterly basis.

D. Notice to Subscribers.

1. A franchisee shall provide each subscriber at the time cable service is installed, and at least annually thereafter, written instructions for placing a service call, filing a complaint, or requesting an adjustment. Each franchisee shall also provide a notice showing the telephone number of metropolitan Nashville office responsible for receiving customer complaints. A franchisee shall also provide each subscriber to its services a schedule of rates and charges, channel positions, description of programming services, a copy of the service contract, delinquent subscriber disconnect and reconnect procedures, and a description of any other of the franchisee's policies in connection with its

subscribers. Copies of these notices shall be provided to metropolitan Nashville. Subject to the rate regulation provisions of Section 6.08.100 hereof, franchisee shall provide metropolitan Nashville and all subscribers at least thirty days' notice of any change in rates, charges, services or any other information required to be provided to this section. Such notice shall be in writing.

2. All franchisee promotional materials, announcements, and advertising of residential cable service to subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials must clearly and accurately disclose price terms and in the case of telephone orders, a franchisee shall take appropriate steps to ensure that price terms are clearly and accurately disclosed to potential customers in advance of taking the order.

3. Each franchisee shall either (a) maintain a public file containing all notices provided to subscribers under these customer service standards, as well as all promotional offers made to subscribers; or (b) furnish a copy of all such notices and offers to metropolitan Nashville.

E. Interruptions of Service. A franchisee may intentionally interrupt service on the cable system only for good cause and for the shortest time possible and, except in emergency situations, only after a minimum of twenty-four hours prior notice to subscribers and metropolitan Nashville of the anticipated service interruption; provided, how-ever, that planned maintenance that does not require more than three hours interruption of service and that occurs between the hours of twelve midnight and six a.m. shall not require such notice to subscribers or to metropolitan Nashville. A written log shall be maintained for all service interruptions on at least a quarterly basis.

F. Billing.

1. A franchisee's first billing statement after a new installation or service change shall be prorated as appropriate and shall reflect any security deposit.

2. A franchisee's billing statement must be clear, concise and understandable, must itemize each category of service and equipment provided to the subscriber and must state clearly the charge therefor.

3. A franchisee's billing statement must show a specific payment due date not earlier than the later of (a) twenty days after the date the statement is mailed; or (b) the fifteenth day of the month in which the service being billed is rendered. Any balance not received by the due date may be assessed a late fee not exceeding franchisee's actual costs of collecting the amount due. The late fee shall appear on the following month's billing statement.

4. A franchisee must notify the subscriber that he or she can remit payment in person at the franchisee's office in metropolitan Nashville and inform the subscriber of the address of that office.

5. Subscribers shall not be charged a late fee or otherwise penalized for any error by a franchisee, including failure to timely or correctly bill the subscriber, or failure to properly credit the subscriber for a payment timely made.

6. On request, the account of any subscriber shall be credited a prorated share of the monthly charge for the service if said subscriber is without service or if service is substantially impaired for any reason for a period exceeding four hours during any twenty-four hour period, except where it can be documented that a subscriber seeks a refund for an outage or impairment which that subscriber caused, or in the case of a planned outage occurring between the hours of twelve midnight and six a.m. of which the subscriber had prior notice. Notwithstanding the foregoing, a franchisee may provide such other compensation at least equal or comparable to the foregoing to which the subscriber agrees.

7. Franchisee shall respond to all written billing complaints from subscribers within thirty days.

8. Refund checks to subscribers shall be issued, or a subscriber's account shall be credited, no later than (a) the earlier of the subscriber's next billing cycle following resolution of the refund or credit request, or thirty days; or (b) the date of return of all equipment to franchisee, if service has been terminated.

9. Credits for service shall be issued no later than the subscriber's next billing cycle after the determination that the credit is warranted.

G. Disconnection/Downgrades,

1. A subscriber may terminate service at any time.

2. A franchisee shall promptly disconnect or downgrade any subscriber who so requests from the franchisee's cable system. No period of notice prior to voluntary termination or downgrade of service may be required of subscribers by any franchisee; provided, however, that as a condition to subscribing to a particular monthly service a franchisee may require a subscriber to subscribe initially to a service for a specified period not to exceed thirty days. No charge may be imposed for any voluntary disconnection, and downgrade charges must comply with the requirements of federal law. So long as the subscriber returns any equipment necessary to receive a service within five business days of the disconnection, no charge may be imposed by any franchisee for any cable service delivered after the date of the disconnect request.

3. A subscriber may be asked, but not required, to disconnect a franchisee's equipment and return it to the business office.

4. Any security deposit and/or other funds due the subscriber shall be refunded on disconnected accounts after the converter has been recovered by the franchisee. The refund process shall take a maximum of thirty days or the next billing cycle, whichever is greater, from the date disconnection was requested to the date the customer receives the refund.

5. If a subscriber fails to pay a monthly subscriber or other fee or charge, a franchisee may disconnect the subscriber's service outlet; however, such disconnection shall not be effected until after forty-five days from the due date of the monthly subscriber fee or other charge, and after ten days' advance written notice of intent to disconnect to the subscriber in question. If the subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the franchisee shall not disconnect service. After disconnection, upon payment by the subscriber in full of all proper fees or charges, including the payment of the reconnection charge, if any, the franchisee shall promptly reinstate service.

6. A franchisee may immediately disconnect a subscriber if the subscriber is damaging or destroying the franchisee's cable system or equipment. After disconnection, the franchisee shall restore service after the subscriber provides adequate assurance that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and amounts owed the franchisee for damage to its cable system or equipment.

7. A franchisee may temporarily disconnect a subscriber that causes signal leakage in excess of federal limits provided that the franchisee shall immediately notify the subscriber of the problem, take immediate steps to correct the problem and, once the problem is corrected, reconnect the subscriber. Franchise may charge the subscriber a reasonable reconnec-tion charge if franchisee reasonably determines that the leakage was caused by subscriber tampering.

8. Except as federal law may otherwise provide, a franchisee may remove its property from a subscriber's premises within thirty days of the termination of service, voluntarily or involuntarily. If a franchisee fails to remove its property in that period, the property shall be deemed abandoned.

H. Changes in Service. In addition to rights reserved by metropolitan Nashville, subscribers shall have rights with respect to alterations in service. The franchisee may not alter the service being provided to a class of subscribers (including by retiering, restructuring or otherwise) without the express permission of each subscriber, unless it complies with this section. At the time the franchisee alters the service it provides to a class of subscribers, it must provide each subscriber at least thirty days' notice, explain the substance and full effect of the alteration, and provide the subscriber the right within the thirty-day period following notice to opt to receive any combination of services offered by franchisee or to discontinue service. Except as federal law otherwise provides, subscribers may not be required to pay any charge (other than the regular service fee), including an upgrade or downgrade charge, in order to receive the services selected. No charge may be made for any service or product that the subscriber has not affirmatively indicated it wishes to receive. Payment of the regular monthly bill does not in and of itself constitute such an affirmative indication.

I. Deposits. A franchisee may require a reasonable, nondiscriminatory deposit on equipment provided to subscribers. Deposits shall be placed in an interest-bearing account, and the franchisee shall return the deposit, plus interest earned to the date repayment is made to the subscriber. Interest will be calculated at the local passbook savings rate.

J. Parental Control Option. A franchisee shall provide parental control devices to all subscribers who wish to be able to block the video or audio portion or any objectionable channel or channels of programming from the cable service entering the subscriber's home.

K. Complaint Resolution.

1. Metropolitan Nashville shall ensure that all subscribers, programmers, and members of the general public have recourse to a satisfactory hearing of any complaints, where there is evidence that the franchisee has not settled the complaint to the satisfaction of the person initiating the complaint. Metropolitan Nashville shall establish procedures for handling and settling complaints.

2. A subscriber whose complaints have not been satisfied under the provisions of this subsection shall have the right to file a complaint in writing with the metropolitan clerk and the CATV special committee. (Ord. 95-1368 § 2 (part), 1995)

6.08.100 Rate regulation.

A. Metropolitan Nashville reserves the right to regulate rates to the maximum degree permitted by applicable state and federal law.

B. The CATV special committee shall perform all functions relating to the regulation of rates for basic cable equipment and programming services, which the metropolitan government is authorized to perform by 47 U.S.C. Section 543, and any applicable regulation adopted by the FCC, specifically including but not limited to the authority to adopt, after public hearing, regulations for the regulation of rates for basic cable equipment and programming services consistent with the regulations adopted by the

FCC as found in 47 C.F.R., Part 76, specifically including the authority to file complaints for excessive rates for basic cable equipment and programming services. Any final decision of the CATV special committee regarding the rates for basic cable equipment and programming services shall be appealable to a court of competent jurisdiction.

C. The franchisee's rates for all cable services offered shall be published and on file with the metropolitan clerk. Rates for all services shall be nondiscriminatory and be uniform to all persons and organizations of like classes, under similar circumstances and conditions. Metropolitan Nashville reserves the right to regulate these rates under provisions of FCC rules and regulations and/or provisions of the Cable Policy Act of 1984 as the same may be amended. Nothing in this provision shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers, nor the granting of reduced rates to nonprofit institutions, nor shall this provision be interpreted to prohibit the establishment of a graduated scale of charges and rate schedules which vary with volume of usage, to which any subscriber or programmer included within a particular classification shall be entitled.

D. Rates for cable services may not be raised without thirty days' prior written notice to subscribers and the CATV special committee. (Ord. 95-1368 § 2 (part), 1995)

6.08.110 Franchise fee.

A. Finding. The council finds that public rights-of-way of metropolitan Nashville and state to be used by a franchisee for the operation of a cable system are valuable public property acquired and maintained by the state and city at great expense to the taxpayers. Metropolitan Nashville further finds that the grant of a franchise to use public rights-of-way confers a valuable and unique special privilege to occupy public property that is not available to all, and without which a franchisee would be required to invest substantial additional capital.

B. Payment to City. As compensation for use of the public rights-of-way, a franchisee shall pay metropolitan Nashville a franchise fee in an amount no greater than five percent of its gross revenues or, if federal law allows a greater amount, such greater amount. Every franchise agreement shall specify the amount a franchisee is required to pay as a franchise fee.

C. Not a Tax or In Lieu of Any Other Tax or Fee.

1. Payment of the franchise fee shall not be considered in the nature of a tax.

2. The franchise fee is in addition to all other taxes and payments that a franchisee may be required to pay under any federal, state, or local law and to any other tax, fee, or assessment imposed by utilities and cable operators for use of their services, facilities, or equipment, including any applicable amusement taxes, except to the extent that such fees, taxes, or assessments must be treated as a franchise fee under Section 642 of the Cable Act, 47 U.S.C. Section 522.

D. Payments.

1. The franchise fee shall be paid quarterly to metropolitan Nashville and shall commence as of the effective date of a franchise. Metropolitan Nashville shall be furnished at the time of each payment with a statement of the franchisee's chief financial officer or controller, or an independent certified public accountant reflecting the total amount of monthly gross revenues for the payment period. Quarterly payments shall be made to metropolitan Nashville no later than fifteen days following the end of each calendar quarter. An annual statement of gross revenues shall be furnished to metropolitan Nashville by an independent, certified public accountant. The franchisee shall provide such an annual audit statement for each calendar year within ninety days from the end of that calendar year.

2. If the franchise is terminated, revoked or forfeited prior to the time specified in this chapter, the franchisee shall immediately submit to metropolitan Nashville a detailed financial statement showing the gross revenues of the franchisee for the time elapsed since the last period for which the franchisee paid the required fee. The franchisee shall pay the appropriate percentage of the gross revenues due to metropolitan Nashville not later than thirty days following the termination. The director of finance or his duly authorized agent is empowered to audit, examine and verify all such financial statements and relevant financial records of the franchisee and its affiliates and to that end shall be entitled to a full inspection of the such relevant books, records and documents.

3. In the event any franchise fee payment or recomputation amount is not made on or before the date specified herein, the franchisee shall pay interest and penalty charges computed from such due date, at the rate specified in Tennessee Code Annotated Section 67-5-2010(b)(2) or any successor statute.

E. No Accord or Satisfaction. No acceptance of any payment by metropolitan Nashville shall be construed as a release or an accord and satisfaction of any claim metropolitan Nashville may have for further or additional sums payable as a franchise fee under this chapter or for the performance of any other obligation of a franchisee. Notwithstanding the foregoing, a franchise fee payment shall be deemed final if not challenged within six years of its payment to metropolitan Nashville.

F. Audit.

1. Metropolitan Nashville shall have the right to inspect and copy records and the rights to audit and to re-

compute any amounts determined to be payable under this chapter, whether the records are held by the franchisee, an affiliate, or any other entity that collects or receives funds related to the franchisee's operation in metropolitan Nashville, including, by way of illustration and not limitation, any entity that sells advertising on the franchisee's behalf. The franchisee shall be responsible for providing the records to metropolitan Nashville at franchisee's cost and expense, without regard to by whom or where they are held. The records shall be maintained for at least six years and shall be available for audit throughout that period, including after the expiration, termination, revocation, abandonment, or forfeiture of the franchise. Metropolitan Nashville's audit expenses shall be borne by metropolitan Nashville unless the audit discloses an underpayment of three percent or more of the amount due, in which case the costs of the audit shall be borne by the franchisee as a cost incidental to the enforcement of that franchisee's franchise. Any additional amounts due to metropolitan Nashville as a result of the audit, together with the interest and penalty charges specified in subsection (D)(3) of this section, shall be paid within thirty days following written notice to the franchisee by metropolitan Nashville of the underpayment, which notice shall include a copy of the audit report.

2. A franchisee shall maintain its fiscal and financial records and have all relevant fiscal and financial records maintained by others on its behalf in such a manner as to enable metropolitan Nashville to determine the cost of assets of the franchisee which are used in providing services within metropolitan Nashville and to determine gross revenues. (Ord. 95-1368 § 2 (part), 1995)

6.08.120 Insurance—Surety—Indemnification.

A. Insurance Required. A franchisee shall maintain, and by its acceptance of a franchise specifically agrees that it will maintain, throughout the entire length of the franchise period, at least the following liability insurance coverage insuring metropolitan Nashville and the franchisee: worker's compensation and employer liability insurance to meet all requirements of Tennessee law and comprehensive general liability insurance with respect to the construction, operation, and maintenance of the cable system, and the conduct of the franchisee's business in metropolitan Nashville, in the minimum amounts of:

1. Three million dollars for property damage resulting from any one accident;

2. One million dollars for personal bodily injury and death for any one person;

3. Five million dollars for personal bodily injury or death resulting from any one accident; and

4. Two million dollars for all other types of liability.

Metropolitan Nashville may review these amounts no more than once every three years and may require reasonable adjustments to them consistent with the public interest. In the event that the franchisee objects to an increase in a policy limit and the parties are unable to agree on a mutually acceptable amount, the dispute shall be resolved by arbitration in accordance with the procedures of the American Arbitration Association.

B. Qualifications of Sureties. All insurance policies shall be with sureties qualified to do business in the state of Tennessee, with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition, and in a form approved by metropolitan Nashville.

C. Policies Available for Review. A franchisee shall keep on file with metropolitan Nashville certificates of insurance.

D. Additional Insureds—Prior Notice of Policy Cancellation. All general liability insurance policies shall name metropolitan Nashville, its officers, boards, commissions, commissioners, agents, and employees as additional insureds and shall further provide that any cancellation or reduction in coverage shall not be effective unless thirty days' prior written notice thereof has been given to metropolitan Nashville. A franchisee shall not cancel any required insurance policy without submission of proof that the franchisee has obtained alternative insurance satisfactory to metropolitan Nashville which complies with this chapter.

E. Failure Constitutes Material Violation. Failure to comply with the insurance requirements set forth in this section shall constitute a material violation of a franchise.

F. Indemnification.

1. A franchisee shall, at its sole cost and expense, indemnify, hold harmless, and defend metropolitan Nashville, its officials, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of its cable system; copyright infringements or a failure by the franchisee to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by the cable system; the conduct of the franchisee's business in metropolitan Nashville; or in any way arising out of the franchisee's enjoyment or exercise of its franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this chapter or a franchise agreement.

2. Specifically, a franchisee shall, at its sole cost and expense, fully indemnify, defend, and hold harmless metropolitan Nashville, and in its capacity as such, the officers, agents, and employees thereof, from and against any and all claims, suits, actions, liability, and judgments for

damages or otherwise subject to Section 638 of the Cable Act, 47 U.S.C. Section 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of its system, including but not limited to any claim against the franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark, or patent, or of any other right of any person, firm, or corporation. This indemnity does not apply to (a) programming carried on any channel set aside for public, educational, or government use, or channels leased pursuant to 47 U.S.C. Section 532, unless the franchisee was in any respect engaged in determining the editorial content of the program, or adopts a policy of prescreening programming for the purported purpose of banning or regulating indecent or obscene programming; or (b) liability arising solely out of metropolitan Nashville's gross negligence or that of its officers, employees, agents, or independent contractors.

3. The indemnity provision includes, but is not limited to, metropolitan Nashville's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceeding.

4. No claim of indemnity shall be valid unless metropolitan Nashville has provided the franchisee with prompt notice and a timely opportunity to assume the defense of a claim covered by the indemnity.

G. No Limit of Liability. Neither the provisions of this section nor any damages recovered by metropolitan Nashville shall be construed to limit the liability of a franchisee for damages under any franchise issued hereunder. (Ord. 95-1368 § 2 (part), 1995)

6.08.130 Performance guarantees and remedies.

A. Security Fund.

1. Prior to a franchise's becoming effective, metropolitan Nashville may require the franchisee to post with metropolitan Nashville a cash security deposit to be used as a security fund to ensure the franchisee's faithful performance of and compliance with all provisions of this chapter, the franchise agreement, and other applicable law, and compliance with all orders, permits, and directions of metropolitan Nashville, and the payment by the franchisee of any claims, liens, fees, or taxes due metropolitan Nashville which arise by reason of the construction, operation, or maintenance of the system. The amount of the security fund shall be specified in the franchise agreement, but may not exceed five percent of the franchisee's projected annual average gross revenues.

2. In lieu of a cash security fund, a franchisee may file and maintain with metropolitan Nashville an irrevocable letter of credit or a corporate surety bond with an acceptable surety in the amount specified in its franchise agreement to serve the same purposes as the cash security fund. Said letter of credit or bond shall remain in effect for the full term of the franchise plus an additional six months thereafter. The franchisee and its surety shall be jointly and severally liable under the terms of the letter of credit or bond for the franchisee's failure to ensure its faithful performance of and compliance with all provisions of this chapter, the franchise agreement, and other applicable law, and compliance with all orders, permits, and directions of metropolitan Nashville, and the payment by the franchisee of any claims, liens, fees, or taxes due metropolitan Nashville which arise by reason of the construction, operation, or maintenance of the system. The letter of credit or bond shall provide for thirty days' prior written notice to metropolitan Nashville of any intention on the part of the franchisee to cancel, fail to renew, or otherwise materially alter its terms. Neither the filing of a letter of credit or bond with metropolitan Nashville, nor the receipt of any damages recovered by metropolitan Nashville thereunder, shall be construed to excuse faithful performance by the franchisee or limit the liability of the franchisee under the terms of its franchise for damages, either to the full amount of the letter of credit or bond, or otherwise.

3. The rights reserved to metropolitan Nashville with respect to the security fund are in addition to all other rights of metropolitan Nashville, whether reserved by this chapter or authorized by other law or a franchise agreement, and no action, proceeding, or exercise of a right with respect to such security fund or letter of credit will affect any other right metropolitan Nashville may have.

4. The following procedures shall apply to drawing on the security fund and letter of credit:

a. If the franchisee fails to make timely payment to metropolitan Nashville of any amount due as a result of a franchise, fails to make timely payment to metropolitan Nashville of any amounts due under a franchise agreement or applicable law, fails to make timely payment to metropolitan Nashville of any taxes due, or fails to compensate metropolitan Nashville within ten days of written notification that such compensation is due, for any damages, costs, or expenses metropolitan Nashville suffers or incurs by reason of any act or omission of the franchisee in connection with its franchise agreement or the enforcement of its franchise agreement after ten days' notice to comply with any provision of the franchise or franchise agreement that metropolitan Nashville determines can be remedied by an expenditure of the security, metropolitan Nashville may withdraw the amount thereof, with interest and any penalties, from the security fund or from funds available under the letter of credit or bond.

b. Within three days of a withdrawal from the security fund or under the letter of credit or bond, metropolitan Nashville shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the franchisee.

c. If at the time of a withdrawal from the security fund or under the letter of credit or bond by metropolitan Nashville, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the franchisee to metropolitan Nashville until it is paid.

d. No later than thirty days after mailing of notification to the franchisee by certified mail, return receipt requested, of a withdrawal under the security fund, letter of credit or bond, the franchisee shall deliver to metropolitan Nashville for deposit in the security fund an amount equal to the amount so withdrawn and shall restore the letter of credit or bond. Failure to make timely delivery of such amount to metropolitan Nashville or to restore the letter of credit or bond shall constitute a material violation of the franchise.

e. Upon termination of the franchise under conditions other than those stipulating forfeiture of the security fund, the balance then remaining in the security fund, together with any interest then accrued, shall be withdrawn by metropolitan Nashville and paid to the franchisee within ninety days of such termination, provided that there is then no outstanding default on the part of the franchisee.

B. Performance Bond.

1. Prior to any cable system construction, upgrade, or other work in the public rights-of-way, a franchisee shall establish in metropolitan Nashville's favor a performance bond in an amount specified in the franchise agreement or other authorization as necessary to ensure the franchisee's faithful performance of the construction, upgrade, or other work. The amount of such performance bond shall be equal to ten percent of the total cost of the work, but shall not exceed three hundred thousand dollars.

2. In the event a franchisee subject to such a performance bond fails to complete the cable system construction, upgrade, or other work in the public rights-of-way in a safe, timely, and competent manner in accord with the provisions of a franchise agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by metropolitan Nashville as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the franchisee, or the cost of completing or repairing the system construction, upgrade, or other work in the public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond. Metropolitan Nashville may also recover against the bond any amount recoverable against the security fund where such amount exceeds that available under the security fund.

3. Upon completion of the system construction, upgrade, or other work in the public rights-of-way and payment of all construction obligations of the cable system to the satisfaction of metropolitan Nashville, metropolitan Nashville shall eliminate the bond or reduce its amount after a time appropriate to determine whether the work performed was satisfactory, which time shall be established considering the nature of the work performed. Metropolitan Nashville may subsequently require a new bond or an increase in the bond amount for any subsequent construction, upgrade, or other work in the public rights-of-way. In any event, the total amount of the bond shall equal ten percent of the cost of the work, but shall not exceed three hundred thousand dollars.

4. The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of metropolitan Nashville; and shall contain the following endorsement:

> This bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by Metropolitan Nashville, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.

C. Failure Constitutes Material Violation. Failure to maintain the security fund, letter of credit, or performance bond shall constitute a material violation of a franchise.

D. Remedies. In addition to any other remedies available at law or equity, metropolitan Nashville may pursue the following remedies in the event a franchisee violates this chapter, its franchise agreement, other applicable ordinances, or applicable state or federal law:

1. Revoke the franchise pursuant to the procedures specified in this chapter;

2. Impose any penalties available under applicable state and local laws for violation of city ordinances;

3. Seek legal or equitable relief from any court of competent jurisdiction;

4. Apply any remedy provided for in a franchise agreement, including liquidated damages, if any.

E. Revocation or Termination of Franchise.

1. Metropolitan Nashville shall have the right to revoke and terminate a franchise and all rights and privileges of a franchisee in the event of a material violation or breach of the terms and conditions of its franchise agreement or this chapter. A material violation or breach by a franchisee shall include, but shall not be limited to, the following:

a. Any breach or violation of any material provision of a franchisee's franchise agreement or this chapter,

b. Misrepresentation of material fact in, or material omission from, any application or report or filing made with metropolitan Nashville,

c. Transfer or attempted transfer made without consent of the council, or

d. Defrauding or attempting to defraud metropolitan Nashville or any subscribers;

2. Prior to any termination or revocation, metropolitan Nashville shall provide a franchisee with written notice of any substantial violation or material breach upon which it proposes to take action. A franchisee shall have a period of sixty days following such written notice to cure the alleged violation or breach, demonstrate to metropolitan Nashville's satisfaction that a violation or breach does not exist, or submit a plan satisfactory to metropolitan Nashville to correct the violation or breach. If, at the end of said sixty-day period, metropolitan Nashville reasonably believes that a substantial violation or material breach has occurred and either has not been cured or a franchisee is not taking satisfactory corrective action, metropolitan Nashville may declare a franchisee in default, which declaration must be in writing. Within twenty days after receipt of a written declaration of default by metropolitan Nashville, a franchisee may request, in writing, a hearing before the council. The council shall conduct a full public proceeding on not less than thirty calendar days' notice, at which time the franchisee and the public shall be given an opportunity to be heard. Following the public hearing, the council may determine whether to revoke the franchise based on the information presented at the hearing, and other information of record. If the council determines to revoke a franchise, it shall issue a written decision setting forth the reasons for its decision. A copy of such decision shall be transmitted to the franchisee;

3. Any franchise may, at the option of metropolitan Nashville following a public hearing, be revoked one hundred twenty calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty day period:

a. Such assignment, receivership, or trusteeship has been vacated, or

b. Such assignee, receiver, or trustee has fully complied with the terms and conditions of this chapter and a franchise agreement and has executed an agreement, approved by a court of competent jurisdiction, assuming and agreeing to be bound by the terms and conditions of this chapter and a franchise agreement acceptable to metropolitan Nashville, and such other conditions as may be established or as are required under Section 6.08.140 of this chapter,

c. In the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a franchisee, metropolitan Nashville may revoke the franchise, following a public hearing before metropolitan Nashville, by serving notice on the franchisee and the successful bidder, in which event the franchise and all rights and privileges of the franchise will be revoked and will terminate thirty calendar days after serving such notice, unless:

i. Metropolitan Nashville has approved the transfer of the franchise to the successful bidder, and

ii. The successful bidder has covenanted and agreed with metropolitan Nashville to assume and be bound by the terms and conditions of the franchise agreement and this chapter, and such other conditions as may be established or as are required pursuant to Section 6.08.140 of this chapter;

4. If metropolitan Nashville revokes a franchise, or if for any other reason a franchisee abandons, terminates, or fails to operate or maintain service to its subscribers, the following procedures and rights are effective:

a. Metropolitan Nashville may require the former franchisee to remove its facilities and equipment at the former franchisee's expense. If the former franchisee fails to do so within a reasonable period of time, metropolitan Nashville may have the removal done at the former franchisee's and/or surety's expense,

b. In the event of revocation, metropolitan Nashville, by resolution, may acquire ownership of the cable system at its then-fair market value,

c. If a cable system is abandoned by a franchisee or the franchisee fails to operate or maintain service to its subscribers or otherwise terminates the franchise, the ownership of all portions of the cable system in public rights-of-way shall revert to metropolitan Nashville and metropolitan Nashville may sell, assign, or transfer all or part of the assets of the system;

5. Metropolitan Nashville may, by resolution, acquire ownership of and operate a cable system, whether or not such ownership is acquired following revocation or forfeiture of a franchise;

6. Notwithstanding any other provision of this chapter, where metropolitan Nashville has issued a franchise requiring the completion of construction, system upgrade, or other specific obligation by a specified date, failure of the franchisee to complete such construction or upgrade, or to comply with such other specific obligations as required, will result in the automatic forfeiture of the franchise without further action by metropolitan Nashville where it is so provided in the franchise agreement, unless metro-

politan Nashville, at its discretion and for good cause demonstrated by the franchisee, grants an extension of time.

F. Obligation of Compliance. Metropolitan Nashville's exercise of a remedy or franchisee's payment of liquidated damages or penalties relieve a franchisee of its obligations to comply with its franchise. In addition, metropolitan Nashville may exercise any rights it has at law or equity.

G. Relation to Insurance and Indemnity Requirements. Recovery by metropolitan Nashville of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise does not limit a franchisee's duty to indemnify metropolitan Nashville in any way; nor shall such recovery relieve a franchisee of its obligations under a franchise, limit the amounts owed to metropolitan Nashville, or in any respect prevent metropolitan Nashville from exercising any other right or remedy it may have. (Ord. 95-1368 § 2 (part), 1995)

6.08.140 Transfers.

A. City Approval Required. No transfer shall occur without prior written notice to and approval of the council, and only then upon such terms and conditions as metropolitan Nashville reasonably deems necessary and proper. The franchisee's obligations under any franchise granted hereunder involve personal services whose performance involves personal credit, trust, and confidence in the franchisee, and transfer without the prior written approval of metropolitan Nashville shall be considered to impair metropolitan Nashville's assurance of due performance. The granting of approval for a transfer in one instance shall not render unnecessary approval of any subsequent transfer.

B. Application.

1. The franchisee shall promptly notify metropolitan Nashville of any proposed transfer. If any transfer should take place without prior notice to metropolitan Nashville, the franchisee will promptly notify metropolitan Nashville that such a transfer has occurred.

2. At least one hundred twenty calendar days prior to the contemplated effective date of a transfer, the franchisee shall submit to metropolitan Nashville an application for approval of the transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. At a minimum, the following information must be included in the application; provided, however, that metropolitan Nashville may waive any of the following for good cause shown:

a. All information and forms required under federal law;

b. All information required in Sections 6.08.040(D)(1)—(5), (10)—(12), and (14) of this chapter;

c. A detailed statement of the corporate or other business entity organization of the proposed transferee, together with an explanation of how decisions regarding the system will be made if the proposed transaction is approved;

d. Any business relationships or transactions of any kind, past, present, or anticipated, between the franchisee, or its owners, subsidiaries, or affiliates, and any potential transferees, or their corporate parents, subsidiaries, or affiliates, other than the proposed transaction that relate to the transfer or are relevant to consideration of the transfer;

e. Any contracts, financing documents, or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein;

f. Any documents related to the transaction (including any documents regarding rates the transferee expects to charge) that have been provided to any entity that has been asked to provide financing (debt, equity, or any other kind) for, or to underwrite any offering made in connection with, the proposed transaction;

g. Any shareholder reports or filings with the Securities and Exchange Commission (SEC) or the Federal Trade Commission (FTC) that discuss the transaction, and any filings required under the Clayton Act in connection with the proposed transaction;

h. Complete financial statements for any potential transferees for the last three years, including balance sheets, income statements, profit and loss statements, and documents detailing capital investments and operating costs;

i. A detailed description of the sources and amounts of the funds to be used in the proposed transaction, indicating how the debt-equity ratio of the system will change in the course of the transaction; what entities will be liable for repayment of any debt incurred; what interest, payment schedule, and other terms or conditions will apply to any debt financing; any debt coverages or financial ratios any potential transferees will be required to maintain over the franchise term if the proposed transaction is approved; what financial resources would be available to the system under the control of the proposed transferee; whether the proposed transferee can meet debt-equity or any other required ratios without increasing rates, with any assumptions underlying that conclusion, and if not, what increases would be required and why;

j. Any other information necessary to provide a complete and accurate understanding of the position of the

system before and after the proposed transfer, including but not limited to, information regarding any anticipated effect of the transfer on subscriber rates and services, and any projected or pro forma income statements or cash flow statements prepared in connection with the proposed transfer or the transaction that would result in the transfer;

k. To the extent not already provided by franchisee's annual report on gross revenues, a detailed analysis of franchise fee payments made by the franchisee, or any affiliate, during the life of the franchise, showing (i) total gross revenues, by category (e.g., basic, pay, pay-per-view, advertising, installation, equipment, late charges, miscellaneous, other); (ii) what revenues, by category, were included in the calculation of the franchise fee, so that it is clear what, if any, revenues were not included and the dollar value of those exclusions; (iii) the value of any noncash compensation received (e.g., trades for advertising spots), showing what amounts of noncash compensation were included in the franchise fee calculation; (iv) what, if any, deductions were made from revenues in calculating the franchise fee (e.g., bad debt), and the amount of each deduction; (v) if an outside agency was used to collect revenue (e.g., a collection agency, an advertising agency paid on the basis of percentage of sales), how much revenue was received by these agencies, and the total amount of revenues included for purposes of the franchise fee calculation;

l. Information sufficient to permit metropolitan Nashville to determine the franchisee's compliance with its franchise obligations over the term of the franchise, including specific descriptions of any noncompliance of which the franchisee or any potential transferee is aware;

m. A brief summary of the proposed transferee's plans for at least the next five years regarding line extension, plant and equipment upgrades, channel capacity, expansion or elimination of services, and any other changes affecting or enhancing the performance of the system.

3. For the purposes of determining whether it shall consent to a transfer, metropolitan Nashville or its agents may inquire into all financial, technical and legal qualifications of the prospective transferee and such other relevant matters as metropolitan Nashville may reasonably deem necessary to determine whether the transfer is in the public interest and should be approved, denied, or conditioned. The franchisee and any prospective transferees shall assist metropolitan Nashville in any such inquiry, and if they fail to do so, the request for transfer may be denied.

C. Determination by Metropolitan Nashville.

1. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a transfer of a franchise, metropolitan Nashville shall consider the legal, financial, and technical qualifications of the transferee to operate the system; any potential impact of the transfer on subscriber rates or services; whether the incumbent franchisee is in compliance with its franchise agreement and this chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other cable system in metropolitan Nashville, and whether operation by the transferee may eliminate or reduce competition in the delivery of cable service in metropolitan Nashville; and whether operation by the transferee or approval of the transfer would adversely affect subscribers, metropolitan Nashville's interest under this chapter, the franchise agreement, other applicable law, or the public interest, or make it less likely that the future cable-related needs and interests of the community would be satisfied at a reasonable cost.

2. Except to the extent federal law deems a transfer approved based on metropolitan Nashville's failure to act, any transfer without metropolitan Nashville's prior written approval shall be ineffective, and shall make this franchise subject to cancellation at metropolitan Nashville's sole discretion, and to any other remedies available under the franchise or other applicable law.

3. Metropolitan Nashville reserves the right to be informed of, inter alia, the purchase price of any transfer or assignment of a cable system, and to the extent permitted by applicable law, to take any necessary steps to ensure that any negotiated sale value which metropolitan Nashville deems unreasonable will not adversely affect subscriber rates, including denial of the transfer.

4. Any mortgage, pledge or lease shall be subject and subordinate to the rights of metropolitan Nashville under this chapter or other applicable law.

D. Transferee's Agreement. No application for a transfer of a franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this chapter and the franchise agreement, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous franchisee under this chapter and the franchise agreement for all purposes, including renewal, unless metropolitan Nashville, in its sole discretion, expressly waives this requirement in whole or in part.

E. Approval Does Not Constitute Waiver. Approval by metropolitan Nashville of a transfer of a franchise does not constitute a waiver or release of any of the rights of metropolitan Nashville under this chapter or a franchise agreement, whether arising before or after the date of the transfer.

F. Processing Fee. As a condition of considering a transfer, metropolitan Nashville may require that the transferee pay metropolitan Nashville's reasonable out-of-

pocket costs and expenses and a reasonable fee, less the applicable filing fee specified in Section 6.08.040(F), in considering the application for transfer of a franchise. Any payments made by the transferee hereunder are requirements or charges incidental to the enforcing of the franchise within the meaning of 47 U.S.C. Section 542(g)(2)(D). (Ord. 95-1368 § 2 (part), 1995)

6.08.150 Discrimination prohibited.

A. Discriminatory Practices Prohibited.

1. A franchisee shall not deny service, deny access, or otherwise discriminate against subscribers, programmers, or residents of metropolitan Nashville on the basis of race, color, religion, national origin, sex, or age.

2. A franchisee shall not discriminate among persons or take any retaliatory action against a person because of that person's exercise of any right it may have under federal, state, or local law, nor may the franchisee require a person to waive such rights as a condition of taking service.

3. A franchisee shall not deny access or levy different rates and charges on any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

4. A franchisee is prohibited from discriminating in its rates or charges or from granting undue preferences to any subscriber, potential subscriber, or group of subscribers or potential subscribers; provided, however, that subject to subsection D of this section, a franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain subscribers, so long as such discounts are offered on a nondiscriminatory basis to similar classes of subscribers throughout metropolitan Nashville; and a franchisee may offer discounts for the elderly, the handicapped, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide under federal law, if such discounts are applied in a uniform and consistent manner. A franchisee shall comply at all times with all applicable federal, state, and city laws, and all executive and administrative orders relating to nondiscrimination.

B. Equal Employment Opportunity. A franchisee shall not refuse to employ, discharge from employment, or discriminate against any person in compensation or in terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, or age. A franchisee shall comply with all federal, state, and local laws and regulations governing equal employment opportunities, as the same may be from time to time amended.

C. Subscriber Privacy.

1. A franchisee shall at all times protect the privacy of all subscribers pursuant to the provisions of Section 631 of the Cable Act, 47 U.S.C. Section 551. A franchisee shall not condition subscriber service on the subscriber's grant of permission to disclose information which, pursuant to federal or state law, cannot be disclosed without the subscriber's explicit consent.

2. Except to the extent permitted by the Cable Act, neither a franchisee nor its agents or employees shall, without the prior and specific written authorization of the subscriber involved, sell or otherwise make available for commercial purposes the names, addresses, or telephone numbers of any subscriber or subscribers, or any information that identifies the individual viewing habits of any subscriber or subscribers.

3. Neither the franchisee nor any other person, agency or entity shall tap or arrange for the tapping of any cable, line, signal input device, or subscriber outlet or receiver that is part of a cable system for any purpose whatsoever.

4. No subliminal transmission shall be utilized at any time, for any purpose whatsoever.

5. A franchisee shall not utilize any two-way communications capability of the system for unauthorized subscriber surveillance of any kind.

D. Uniform Rates. A franchisee shall have a rate structure for the provision of cable services that is uniform throughout the geographic area in which it provides cable service over its cable system. Notwithstanding the foregoing, a franchisee may conduct experimental services and service offerings to particular regions of its franchise area without making such experimental services available throughout its franchise area; provided, that such experimental service offerings are offered on a nondiscriminatory basis to similar classes of subscribers. (Ord. 95-1368 § 2 (part), 1995)

6.08.160 Miscellaneous provisions.

A. Compliance With Laws. Each franchisee shall comply with all federal and Tennessee laws, as well as metropolitan Nashville ordinances, resolutions, rules and regulations heretofore and hereafter adopted or established during the entire term of its franchise.

B. No Recourse Against Metropolitan Nashville. Without limiting such immunities as metropolitan Nashville or other persons may have under applicable law, a franchisee shall have no recourse whatsoever against metropolitan Nashville or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this chapter or because of the enforcement of this chapter or metropolitan Nashville's exercise of its authority pursuant to this chapter or other applicable law, unless the same

shall be caused by criminal acts or by wilful misconduct or gross negligence.

C. Rights.

1. The rights reserved to metropolitan Nashville by this chapter are cumulative and shall be in addition to and not in derogation of any other rights which it may have with respect to the subject matter of this chapter.

2. Metropolitan Nashville reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this chapter.

3. No franchisee shall be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of metropolitan Nashville to enforce prompt compliance. Nor shall any inaction by metropolitan Nashville be deemed to waive a provision voiding any provision of this chapter.

D. Amendments to this Ordinance. In order to fulfill the public interest goals of this chapter, to provide additional communications service to metropolitan Nashville through the use of cable television and thereby to ensure the benefits which will result from such service, metropolitan Nashville shall specifically reserve the right in any franchise granted to amend this chapter to effectuate the public interest in the operation of a cable television system.

E. Incorporation by Reference. Any franchise granted pursuant to this chapter shall include a provision which shall incorporate by reference this chapter into such franchise as fully as if copied therein verbatim.

F. Force Majeure. A franchisee shall not be deemed in default with provisions of its franchise where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the franchisee's control, and a franchise shall not be revoked or a franchisee penalized for such noncompliance, provided that the franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its franchise without unduly endangering the health, safety, and integrity of the franchisee's employees or property, or the health, safety, and integrity of the public, public rights-of-way, public property, or private property.

G. Public Emergency. In the event of a major public emergency or disaster as determined by metropolitan Nashville, a franchisee immediately shall make the entire cable system, employees, and property, as may be necessary, available for use by metropolitan Nashville or other civil defense or governmental agency designated by metropolitan Nashville to operate the system for the term of such emergency or disaster for the emergency purposes. In the event of such use, a franchisee shall waive any claim that such use by metropolitan Nashville constitutes a use of eminent domain; provided that metropolitan Nashville shall return use of the entire system, employees, and property to the franchisee after the emergency or disaster has ended or has been dealt with.

H. Connections to System—Use of Antennae.

1. Subscribers shall have the right to attach devices to a franchisee's system to allow them to transmit signals or services for which they have paid to VCR's, receivers, and other terminal equipment. Subscribers also shall have the right to use their own remote control devices and converters, and other similar equipment, and a franchisee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the franchisee's system.

2. A franchisee shall not, as a condition of providing service, require a subscriber or potential subscriber to remove any existing antenna, or disconnect an antenna except at the express direction of the subscriber or potential subscriber, or prohibit or discourage a subscriber from installing an antenna switch; provided that such equipment and installations are consistent with applicable codes.

I. Calculation of Time. Unless otherwise provided, when the performance or doing of any act, duty, matter, or payment is required under this chapter or any franchise agreement, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time.

J. Severability. If any term, condition, or provision of this chapter shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by metropolitan Nashville and shall thereafter be binding on the franchisee and metropolitan Nashville.

K. Notice. Every direction, notice or order to be served upon the franchisee shall be sent to its local office, which shall be located in the franchise area. Every notice to be served upon metropolitan Nashville shall be delivered, with registered letter by registry receipt, to the metropolitan clerk at the Metropolitan Courthouse. The delivery or mailing of such notice, direction or order shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of delivery.

L. Materiality. Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any

failure of compliance hereunder is material and substantial.

M. Right of Intervention. Metropolitan Nashville may intervene in any suit or proceeding in which the franchisee is a party; provided, that metropolitan Nashville's interests are not adequately represented by the existing parties; and provided further, that the disposition of each suit or proceeding without metropolitan Nashville's participation, may as a practical matter, impair or impede metropolitan Nashville's ability to protect its interests. (Ord. 95-1368 § 2 (part), 1995)

Chapter 6.10

PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS OVERSIGHT COMMITTEE

Sections:

6.10.010 Created.
6.10.020 Membership—Appointment.
6.10.030 Term of office and vacancy filling.
6.10.040 Powers and duties.

6.10.010 Created.

There is created the public, educational and governmental (PEG) access oversight committee. (Ord. 95-1517 § 1, 1995)

6.10.020 Membership—Appointment.

The PEG access oversight committee will consist of seven members. The composition of the committee shall be as follows:

A. One member to be appointed by the metropolitan board of public education, which member will represent instructors of grades K through 12;

B. One member representing post secondary interests to be appointed by the metropolitan mayor, and confirmed by a majority of the metropolitan council;

C. One member of the CATV special committee to be selected by its membership;

D. One member from the Community Access Corporation (CAC) board of directors, to be selected by said board;

E. One member to represent government access services, to be appointed by the metropolitan mayor and confirmed by a majority of the metropolitan council;

F. One member of the Metropolitan Educational Access Corporation (MEAC) board of directors, to be selected by said board;

G. One at-large member to be appointed by the metropolitan mayor and confirmed by a majority of the metropolitan council;

H. The executive officers or their designees of the metropolitan board of public education, Nashville Public Television, CAC, MEAC and the department of information systems shall serve as nonvoting ex officio members of the committee, with the department of information systems being responsible for implementing the decisions of the committee;

I. In addition to the members stated above, the franchise holders shall be entitled to select one nonvoting ex officio member of the committee. (Ord. 2001-839 § 1, 2001; Ord. 95-1517 § 2, 1995)

6.10.030 Term of office and vacancy filling.

The term of the members of the PEG access oversight committee shall be three years; provided that the terms of the first set of committee members be staggered in the following manner:

A. The members appointed by the metropolitan board of public education shall serve initial terms of three years;

B. The member representing post-secondary interests shall serve an initial term of two years;

C. The member selected by the CATV special committee shall serve an initial term of two years;

D. The member selected by the board of directors of the Community Access Television Corporation shall serve an initial term of one year;

E. The member representing government access shall serve an initial term of one year; and

F. The at-large member shall serve an initial term of two years.

Vacancies occurring during the term of any member shall be filled by the same method as the appointment of the member in whose position the vacancy occurs. (Ord. 95-1517 § 3, 1995)

6.10.040 Powers and duties.

The PEG access oversight committee shall have the following powers and duties:

A. To elect a chair and vice-chair and such other officers as it may deem necessary, all of which shall serve terms of not more than one year;

B. To promulgate and maintain bylaws;

C. To allocate and coordinate access to channel and/or bandwidth capacity provided pursuant to the requirements imposed by law or by agreement upon owners and operators of franchises for cable communications issued by the metropolitan government, provided such allo-

cation and coordination of access shall not become effective unless and until ratified by the council by resolution;

D. To seek and receive donations, grants of funds, and programming equipment from private and public sources, including franchises of cable communications services, and to use same for the sole purpose of promoting and assisting the providers of public, educational and governmental cable television services, provided such funds received by donation, grant or otherwise have been duly appropriated;

E. To use funds received through any donation or grant to purchase, lease, or otherwise acquire in a manner consistent with Article 4 of the Metropolitan Code any necessary equipment for use by providers of public, educational, and governmental cable television services, provided such funds received by donation, grant or otherwise have been duly appropriated;

F. To hold all equipment in the name of the metropolitan government and subject to the laws of the metropolitan government;

G. Nothing herein shall be construed to give the PEG access oversight committee any control over the content of any public, educational, or governmental access pro-gramming;

H. To provide the CATV special committee any report regarding public, educational and governmental access services as may be required by any franchise granted by the metropolitan government for cable communications services;

I. The powers and duties of PEG shall be limited to those matters specifically provided herein, and in no event shall PEG have any authority or control of government access television, which is managed and operated by the Department of Information Services. (Ord. 2001-839 § 2, 3 and 4, 2001; Ord. 95-1517 § 4, 1995)

Chapter 6.12

DANCES AND DANCEHALLS

Sections:

6.12.010 Definitions.
6.12.020 Registration, permit and fees required.
6.12.030 Permit—Issuance conditions.
6.12.040 Beer permit board—Powers and duties.
6.12.050 Fees—Disposition and purpose.
6.12.060 Prohibited hours of operation.
6.12.070 Minors prohibited when.
6.12.080 Prohibited acts, conduct and persons.
6.12.090 Revocation of permit.

6.12.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Known," used in connection with the words "prostitute," "male or female procurer" or "vagrant," means known to the manager, owner or lessee of a public dancehall, or to the person conducting a public dance, or to the police or other authorities having to do with the regulation and supervision of public dancehalls or public dances, to be one of the persons named, or who has such general reputation or character, or one who has pleaded guilty to or has been convicted of being a prostitute, male or female procurer or vagrant.

"Public dance" means any dance to which admission can be had by payment directly or indirectly of a fee or any dance to which the public generally may gain admission with or without the payment of a fee.

"Public dancehall" means any room, place or space in which a public dance shall be held. (Prior code § 7-1-1)

6.12.020 Registration, permit and fees required.

It is unlawful to hold or conduct any public dance or to operate any public dancehall within the metropolitan government area until such dancehall or other place in which such public dance may be held shall first have been duly registered as a public dancehall with the chief of police and a permit shall have been issued by the beer permit board for the operation of such dancehall or the holding of such dance, an application fee of one hundred dollars plus a one hundred dollar annual fee for the permit. (Prior code § 7-1-2)

6.12.030 Permit—Issuance conditions.

No permit for the operation of a public dancehall shall be issued until it shall be found that the place for which the same is issued complies with and conforms to all laws, ordinances, health and fire regulations applicable thereto, is properly ventilated and supplied with separate and sufficient toilet conveniences for each sex and is a safe and proper place for the purpose for which it shall be used. The permit for such dancehall shall be in writing and shall be posted in a conspicuous place in the dancehall at all times when the same shall be operated. (Prior code § 7-1-3)

6.12.040 Beer permit board—Powers and duties.

A. The beer permit board shall be charged with the duty of supplying application forms for permits for permission to operate a public dancehall or a public dance and such forms shall contain such pertinent questions to be answered by the applicant, and to be sworn to, as is deemed to be necessary and proper by a majority of the members of the beer permit board.

B. The beer permit board is authorized to adopt such rules and regulations for the property regulation and supervision of public dancehalls and public dances as a majority of the board shall decide in conformity with the provisions of this chapter. (Prior code § 7-1-4 (part))

6.12.050 Fees—Disposition and purpose.

A. All fees collected under the provisions of this chapter shall be deposited to the credit of the general fund of the general services district and shall be used to supplement the budget of the beer permit board.

B. The secretary of the beer permit board shall keep a record of all permits issued as in the case of the issuance of permits by the board to sell beer. (Prior code § 7-1-8)

6.12.060 Prohibited hours of operation.

All public dances shall be discontinued and all public dancehalls closed from three a.m. to six a.m. on weekdays and Saturday from three a.m. to noon on Sundays. (Ord. 98-1474 § 1, 1999)

6.12.070 Minors prohibited when.

It is unlawful for any dance permit holder or his agent or employee to allow any person under eighteen years of age to loiter or congregate about the premises when alcoholic beverages are being sold. The burden of ascertaining the age of minor persons shall be on the permit holder and his agent or employee. When the minor is seated at a table, there shall be no beer served at the table unless such minor is accompanied by one or both parents, but only if served in conjunction with food. (Ord. 98-1474 § 2, 1999)

6.12.080 Prohibited acts, conduct and persons.

It is unlawful for any person to whom a dancehall permit has been issued or for any person conducting a public dancehall or public dance to allow or permit in such dancehall or at such dance any indecent act to be committed or any disorder or conduct of a gross, violent or vulgar character, or to permit in any such dancehall or at any such dance any known prostitute, pimp or procurer. It is unlawful for any known prostitute, male or female procurer or vagrant to be present at any public dance or at any public dancehall. (Prior code § 7-1-5)

6.12.090 Revocation of permit.

A. The permit to operate any public dancehall may be revoked for the violation of any provision of this chapter or provision of this code or other ordinance or law relating to such places, and upon the revocation of the permit to operate such public dancehall, at least three months shall elapse before another permit shall be granted to the manager, owner or lessee of such dancehall to operate the same.

B. The procedure provided by laws of the metropolitan government relative to the beer permit board and by the rules and regulations adopted by the beer permit board for the revocation of permits or licenses to sell beer shall be applicable to the revocation of permits of public dancehalls or public dances. (Prior code § 7-1-4 (part))

Chapter 6.14

FOREIGN TRADE ZONES

Sections:

6.14.010 Establishment—Management.
6.14.020 Approval of agreements.

6.14.010 Establishment—Management.

The establishment and management of foreign trade zones and foreign trade subzones as authorized by Tennessee Code Annotated Section 7-85-101, et seq., as the same may be amended or recodified, shall be an administrative responsibility of the mayor's office of economic and community development. (Ord. BL2000-499 § 1 (part), 2000)

6.14.020 Approval of agreements.

Any contractual agreement for the operation and maintenance of a foreign trade zone or foreign trade subzone may be approved by resolution of the metropolitan council receiving twenty-one votes. (Ord. BL2000-499 § 1 (part), 2000)

Chapter 6.16

SELF-SERVICE DRY CLEANING ESTABLISHMENTS

Sections:

6.16.010 Permit required—Conditions.
6.16.020 Buildings and equipment.
6.16.030 Plumbing and bathroom facilities.
6.16.040 Ventilation system.

6.16.050 Access doors.
6.16.060 Operation of equipment—Attendant and instruction list.
6.16.070 Solvent—Protective equipment.
6.16.080 Maintenance of equipment.
6.16.090 Fire extinguisher.

6.16.010 Permit required—Conditions.

A. It is unlawful for any person to operate a coin-operated or self-service dry cleaning establishment within the metropolitan government area who does not possess a valid permit issued to him by the chief medical director.

B. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such permit. Permits shall not be transferable from one person to another person or place. A valid permit shall be posted in every such dry cleaning establishment. (Prior code § 20-1-201)

6.16.020 Buildings and equipment.

A. No coin-operated or self-service dry cleaning equipment shall be installed in buildings occupied in part as dwellings. Buildings where such equipment shall be installed shall be of single-story construction, with concrete floors in good condition so as to be impervious to solvents. Such equipment shall be installed in an enclosed room so that only the front portion of the machine, including the access door and coin slots, is exposed on the customer side, and that portion of the equipment, including pipes, filters, pumps, sludge tanks, lint screens, heat exchangers, etc., shall be made inaccessible to the customer by a partition. The access door to the room housing the rear portion and mechanisms of the machine shall be equipped with self-closing and positive self-locking devices, and only authorized personnel shall be admitted to such room.

B. The base of the room housing the machines shall be constructed so as to prevent solvent leaks from draining into the customer area. This may be accomplished by a method of leakproof diking around the total periphery of the base of the machines and auxiliary equipment or by a recessed floor pit under the machines of sufficient capacity to hold the entire solvent content of the equipment. Gravity drains may be utilized to transfer the solvent spillage to a properly vented holding tank, in which case the capacity requirement of the dikes or floor pit would not be applicable. (Prior code § 20-1-193)

6.16.030 Plumbing and bathroom facilities.

A. There shall be no direct interconnections between wastewater discharge lines and the sanitary sewer. Such connections shall be air vented with a gap equal to one and one-half times the diameter of the discharge line.

B. A minimum of one toilet and one lavatory shall be provided for each sex. (Prior code § 20-1-196)

6.16.040 Ventilation system.

A system of mechanical ventilation shall be provided to prevent a perceptible buildup of solvent vapor in the customer or servicing areas. Such a system shall meet the following criteria:

A. Maintain an air velocity of not less than one hundred cubic feet per minute through all openings from the customer area to the area behind the machines. In calculating air volumes required, the area of self-closing doors as specified below need not be included;

B. Maintain an inward air velocity of not less than one hundred cubic feet per minute through machine access door openings at all times that such doors are opened;

C. Remove all perceptible solvent vapor from clothing during the drying cycle before it is possible for the customer to open the machine access door;

D. Prevent solvent condensation within the exhaust system ductwork;

E. Maintain all interior ductwork under negative pressure;

F. Discharge exhaust air at least five feet above roof level and in such manner that it does not gain access to adjacent buildings, direct-fired heating equipment or to air conditioning or ventilation systems;

G. Be interlocked with the cleaning machines in such manner that in the event of exhaust system failure, the cleaning machines are inoperative;

H. Remain in continuous operation at all times machines are available for customer use;

I. In addition to the exhaust system as required above, there must be an auxiliary exhaust system having a minimum capacity of one thousand cubic feet of air per minute per machine for emergency use in the event of a major spillage of solvent, or for use during major servicing operations where opening of equipment would otherwise result in excessive solvent exposure to service personnel;

J. Provision shall be made to supply make-up air equivalent to the quantity exhausted in meeting the requirements in subsections A to H of this section. Provision shall also be made to warm make-up air during cold weather. (Prior code § 20-1-194)

6.16.050 Access doors.

The access doors of the machines shall be equipped with an interlock so that the doors cannot be opened by the customer while the machine is in operation. The interlock shall be connected so that in the event of a power failure,

the machines will fail safe. A visual signal shall be provided on each machine to indicate a malfunction to the customer. The drying and aeration cycles of the machines shall be so controlled by thermostats, timers or other equivalent devices as to preclude the removal of vapor-laden garments by the customer. (Prior code § 20-1-195)

6.16.060 Operation of equipment—Attendant and instruction list.

A. An attendant familiar with the operation of the equipment shall be on hand at all times that machines are available for customer use. A step-by-step self-explanatory instruction list, including an emergency telephone number, shall be conspicuously posted near the machines for customer use.

B. In case of a malfunction or misuse that interferes with the normal cycle of the machine, and vapor-laden garments are removed, they shall be rerun through the drying cycles of a properly functioning machine or exhaust ventilated drying cabinet, prior to being released to the customer. (Prior code § 20-1-197)

6.16.070 Solvent—Protective equipment.

A. Only the solvent specified by the equipment manufacturer shall be used in self-service or coin-operated dry cleaning equipment. The solvent shall be stored in closed containers in a ventilated room not accessible to the customers or other persons not familiar with health hazards of the solvent.

B. The attendant and maintenance personnel shall be provided with protective respiratory equipment and gloves impervious to the solvent being used. (Prior code § 20-1-199)

6.16.080 Maintenance of equipment.

The machines shall be checked daily and maintained in a state of good repair, free of solvent leaks. Closed metal containers shall be provided for the temporary storage of sludge and lint removed from sludge tanks, filters and lint strainers. Such containers shall not be stored in a location accessible to persons unfamiliar with health hazards of the solvent. (Prior code § 20-1-198)

6.16.090 Fire extinguisher.

A utility fire extinguisher, of either the carbon dioxide or dry chemical type, shall be provided as protection against electrical fires. (Prior code § 20-1-200)

Chapter 6.20

ELECTRICIANS, ELECTRICAL CONTRACTORS AND EQUIPMENT INSTALLERS

Sections:

Article I. Electricians

6.20.010 Registrations and licenses—Required—Classifications established.
6.20.020 Registrations and licenses—Classifications defined.
6.20.030 Registration and licensure requirements.
6.20.040 Application for examination and licensure.
6.20.050 Examination—Notice.
6.20.060 Examination—Conducting authority—Type.
6.20.070 Examination—Failure to appear.
6.20.080 Reexamination.
6.20.090 Licensure issuance conditions.
6.20.100 Fees—Examination, licensure and renewal.
6.20.110 Certificate of licensure—Expiration and renewal—Recordation.
6.20.120 Registrations or licenses—Revocation and suspension.
6.20.125 Altering or lending a license or using another's license unlawful—Penalties.

Article II. Electrical Contractors

6.20.130 Requirements for registration.
6.20.140 Registration—Required When.
6.20.150 Duties of electrical contractors, equipment contractors and low-voltage contractors.
6.20.160 Change of status notification required—Failure to employ authorized contractors unlawful.
6.20.170 Work stoppage order.
6.20.180 Appeal from work stoppage order.

Article III. Equipment Installers

6.20.200 Equipment installer defined.
6.20.210 Registration required.
6.20.220 Licensure requirements.
6.20.240 Permitted activities and duties.

Article IV. Master Electricians, Equipment Installers and Low-Voltage Wiring Installers

6.20.250 **Requirements for license.**
6.20.260 **Duties.**
6.20.270 **Active registration required.**
6.20.280 **Licenses placed on inactive status—Reactivation.**
6.20.290—
6.20.350 **Reserved.**

Article V. Maintenance Electrician

6.20.360 **Limitation on work—Penalties for violations.**

Article I. General Provisions

6.20.010 Registrations and licenses—Required—Classifications established.

A. Except as hereinafter provided, it is unlawful for any person to perform electrical work within the area of jurisdiction of the metropolitan government unless such person is licensed or registered under the provisions of this chapter.

B. For the purpose of this code, every person engaged in the electrical business for which an electrical permit is required, within the area of jurisdiction of the metropolitan government, shall be "licensed" by the metropolitan board of electrical examiners and appeals or "registered" by the department of codes administration.

C. For the purpose of this code, the classification of the various licenses and registrations of the electrical industry shall be:

1. Electrical contractor;
2. Master electrician;
3. Equipment contractor;
4. Electrical equipment installer;
5. Low-voltage contractor;
6. Low-voltage wiring installer.

D. For the purpose of this code, a person classified as a maintenance electrician need not and will not be licensed and registered by the department of codes administration. (Ord. 91-1558 § 12, 1991: prior code § 14-1-60)

6.20.020 Registrations and licenses—Classifications defined.

In this chapter:

A. "Electrical contractor" means any person registered to engage in the business of installing, erecting, altering, repairing or contracting to install, erect, alter or repair electric wires, conductors, material, machinery, apparatus or systems used for the transmission of electrical energy for light, heat, power, control or signal purposes.

B. "Master electrician" means any person licensed to obtain electrical permits and supervise the installation of electrical work.

C. "Equipment contractor" means any person registered to engage in the business of electrical wiring of equipment, including but not limited to HVAC systems, swimming pools and associated equipment, electric signs, gasoline dispensing units, and other similar equipment and devices.

D. "Electrical equipment installer" means any person licensed to install and engage in the electrical wiring of equipment, including but not limited to HVAC systems, swimming pools and associated equipment, electric signs, gasoline dispensing units, and other similar equipment and devices.

E. "Low-voltage contractor" means any person registered to engage in the business of installing, erecting, altering, repairing or contracting to install, erect, alter or repair electric wires, conductors, material, machinery, apparatus or systems operating at fifty volts or less, used for Class 1, Class 2 and Class 3 remote control, signaling and power-limited circuits, fire-protective signaling systems, communications circuits and coaxial cable distribution of radio frequency signals.

F. "Low-voltage wiring installer" means any person licensed to obtain electrical permits and supervise the installation of Class 1, Class 2 and Class 3 remote control, signaling and power-limited circuits, fire-protective signaling systems, communications circuits and coaxial cable distributing of radio frequency signals.

G. "Maintenance electrician" means any person engaged in the maintenance, repair or modification of existing electrical installations. (Ord. 91-1558 § 13, 1991: prior code § 14-1-61)

6.20.030 Registration and licensure requirements.

It is unlawful for any person to engage in business as an electrical contractor, equipment contractor or low-voltage contractor, or to be employed as a master electrician, equipment installer or low-voltage wiring installer, without first having been licensed as such by the metropolitan board of electrical examiners and appeals or registered by the department of codes administration. No electrical contractor, equipment contractor, electrical equipment installer, low-voltage contractor or low-voltage wiring installer may substitute as a master electrician unless that person has satisfied the qualifications for and been licensed as a master electrician. (Ord. 91-1558 § 14, 1991: prior code § 14-1-62)

6.20.040 Application for examination and licensure.

A. It shall be the duty of every person desiring to be employed as a master electrician or low-voltage wiring installer to make application to the metropolitan board of electrical examiners and appeals for an examination and issuance of a license; present licenses and low-voltage wiring installers defined below are exempted. Application for an examination and licensure shall be made on forms provided by the director of codes administration and shall be accompanied by the required examination fee, as hereinafter set forth.

B. Persons heretofore "certified" and registered as "certified" electrical contractors are hereafter considered to be licensed and registered as "master electrician."

C. Every person who, within one hundred twenty days of the adoption of the ordinance codified in this section, and is employed as a full-time low-voltage wiring installer by an established low-voltage contractor may be licensed as a low-voltage wiring installer under the provisions of this chapter. In order to qualify under this licensing provision, the low-voltage wiring installer must provide proof that he/she has worked on five low-voltage wiring installations in Metropolitan Nashville and Davidson County. (Ord. 91-1558 § 16 (part), 1991: prior code § 14-1-63)

6.20.050 Examination—Notice.

Each applicant for examination and certification as a master electrician, electrical equipment installer or low-voltage wiring installer shall be notified, in writing, by the secretary of the board, as to the time and place of such examination not less than seven days prior to the date scheduled for such examination. (Ord. 91-1558 § 16 (part), 1991: prior code § 14-1-64)

6.20.060 Examination—Conducting authority—Type.

A. An examination of each applicant for a master electrician's license, electrical equipment installer's license or low-voltage wiring installer's license shall be conducted by the department of codes administration at the time and place determined by the board.

B. The examination may be written or oral, or a combination of both, at the discretion of the board, as to the applicant's proficiency in the art of electrical installations and his knowledge of the provisions and material requirements of this chapter and any amendments made thereto, as such are related to the applicant's request for certification. (Ord. 91-1558 § 16 (part), 1991: prior code § 14-1-65)

6.20.070 Examination—Failure to appear.

The failure of an applicant to appear before the board of electrical examiners and appeals for examination at the time and place scheduled for such examination shall not be construed as denying any applicant the right to request a rescheduling of such examination at a later date; except, that no application for examination and licensure shall be held that pending by the board, except for just cause, for more than ninety days following receipt of such application. In the event an applicant, after due notice, shall fail to appear before the board for examination, during the ninety-day period, as set forth in this section, the application shall be rejected, the applicant notified of the action taken by the board and the examination fee shall be forfeited. (Ord. 91-1558 § 4 (part), 1991; prior code § 14-1-66)

6.20.080 Reexamination.

Any applicant for examination and licensure as a master electrician, electrical equipment installer or low-voltage wiring installer who shall fail to pass the examination as required by the metropolitan board of electrical examiners and appeals may not apply for reexamination within thirty days following the date of such examination. (Ord. 91-1558 § 17 (part), 1991: prior code § 14-1-67)

6.20.090 Licensure issuance conditions.

The metropolitan board of electrical examiners and appeals shall issue a license in each of the following classifications when the applicant has fulfilled the following requirements:

A. A master electrician's license shall be issued to every applicant who makes proper application for such license, successfully completes the required master electrician's examination, pays the required master electrician's licensure fee, and meets the requirements of Section 6.20.250.

B. An electrical equipment installer's license shall be issued to every applicant who makes proper application for such license, successfully completes an examination designed to measure the applicant's knowledge and ability in his/her field of equipment installation, and pays the required electrical equipment installer's licensure fee.

C. A low-voltage wiring installer's license shall be issued to every applicant who makes proper application for such license, successfully completes an examination designed to measure the applicant's knowledge and ability in his/her field of equipment installation, and pays the required low-voltage wiring installer's licensure fee. (Ord. 91-1558 § 17 (part), 1991: prior code § 14-1-68)

6.20.100 Fees—Examination, licensure and renewal.

The fees for examination and licensure of master electricians, electrical equipment installers and low-voltage wiring installers shall be as follows:

Classification	Examination Fee	Original Certificate	Renewal Certificate
Electrical contractor	N/A	N/A	N/A
Master electrician	$50.00	$150.00	$100.00
Equipment contractor	N/A	N/A	N/A
Electrical equipment installer	$50.00	$75.00	$50.00
Low-voltage contractor	N/A	N/A	N/A
Low-voltage wiring installer	$50.00	$75.00	$50.00

(Ord. 91-1558 § 17 (part), 1991: prior code § 14-1-69)

6.20.110 Certificate of licensure—Expiration and renewal—Recordation.

A. Beginning in 1992, each license issued by the board shall expire on the last day of March following issuance and shall become invalid unless renewed. Such license shall be renewed annually and recorded in the office of the director of codes administration on or before the first day of April each year, and such records shall be open to public inspection during the normal working hours of the department of codes administration.

B. Late renewal of licenses shall be accepted for a period of one year following the required renewal date. Application for late renewal shall be accompanied by the required renewal fee plus an amount equal to ten percent of the regular fee for each calendar month or portion of a month of delinquency.

C. Licenses which have not been renewed for one calendar year following the required renewal date will be revoked and license holders will be required to reapply for licensing. (Ord. 91-1558 § 18, 1991: prior code § 14-1-70)

6.20.120 Registrations or licenses—Revocation and suspension.

A. The metropolitan board of electrical examiners and appeals shall revoke or suspend a registration or license issued to any electrical contractor, master electrician, equipment contractor, equipment installer, low-voltage contractor or low-voltage wiring installer, upon positive proof that such person:

1. Knowingly violated the provisions of this chapter or the rules and regulations of the board;
2. Practiced fraud or deception in making application for or obtaining such registration or license;
3. Has become incompetent under the provisions of this chapter to perform a service to the public as an electrical contractor, master electrician, equipment contractor, electrical equipment installer, low-voltage contractor or low-voltage wiring installer;
4. Permitted his/her license or registration to be used, directly or indirectly, by another to obtain or perform electrical work or services;
5. Is guilty of such other unprofessional or dishonorable conduct of such nature as to deceive or defraud the public.

B. No action of the board to suspend or revoke a certificate of registration shall become final until the alleged offender has been given an opportunity to appear before the board to show cause as to why such action should not be taken.

C. Notice in writing of the proposed action of the board to revoke or suspend a registration or license shall be given to the holder of such registration or license, stating the specific charges upon which such action is based. The notice shall stipulate that a hearing will be scheduled at time and place set by the board for the aggrieved party to show cause why such action should not be made final. Such hearing shall not be held less than forty-eight hours following notice to the aggrieved party. Failure to appear before the board to answer the specific charges set forth in the notice shall be deemed just cause for final revocation or suspension of a registration or license.

D. In the event a registration or license is revoked by the board, an application for reinstatement of such license shall not be accepted by the board within twelve months after the date of such revocation. (Ord. 91-1558 § 19, 1991: prior code § 14-1-71)

6.20.125 Altering or lending a license or using another's license unlawful—Penalties.

A. It shall be a misdemeanor for any person to do electrical work for which a permit is required unless that person has a valid license and registration as required by this chapter.

B. It shall be a misdemeanor for any person licensed or registered under this article to alter, transfer, lend or

rent his/her license or registration to another or to use a license or registration not his/her own.

C. It shall be a misdemeanor for any person to represent himself/herself falsely to be licensed under this article, or wrongfully to use a license issued by the metropolitan board of electrical examiners and appeals. (Ord. 91-1558 § 15, 1991: prior code § 14-1-62.1)

Article II. Electrical Contractors

6.20.130 Requirements for registration.

A. License Required. Every electrical contractor, equipment contractor and low-voltage contractor shall be required to have an electrical contractor's registration, equipment contractor's registration or low-voltage contractor's registration, from the department of codes administration. All parties to joint ventures shall be registered electrical contractors, equipment contractors or low-voltage wiring contractors.

B. Applications. Applications submitted in the name of a person, firm or corporation shall be submitted in the name of an individual. The name of the individual shall be specified on the application form.

C. Qualifications of Applicants. The applicants for an electrical contractor's registration, equipment contractor's registration or low-voltage contractor's registration shall be qualified by virtue of experience and knowledge to be an electrical contractor, equipment contractor or low-voltage wiring contractor. The individual must maintain a local or toll-free telephone number.

D. Examination. None.

E. Master Electrician Required. No person other than an individual holding a current and valid master electrician's license shall be registered as an electrical contractor by the department of codes administration unless such person employs the full-time services of an individual holding a current and valid master electrician's license duly issued by the metropolitan board of electrical examiners and appeals. Each party to a joint venture shall employ at least one licensed master electrician. Licensed master electricians employed by all parties must sign all permits.

F. Existing Registered Electrical Contractors. Every person, firm or corporation which is validly registered with the department of codes administration as a metropolitan electrical contractor on June 4, 1991, the date of adoption of the ordinance codified in this section, shall be registered as an electrical contractor under the provisions of this chapter; providing, however, that the electrical contractor shall submit within one hundred twenty days the name of the individual required in subsection B above and comply with the provisions of Section 6.20.160 of this code.

G. Affidavit. Each applicant for an electrical contractor's registration proposing to employ the required master electrician shall submit an affidavit to the metropolitan board of electrical examiners and appeals signed by the applicant, specifying the name of the master electrician responsible for the work of the electrical contractor's company or business and stating that he will permit the master electrician to have access to all records pertaining to permits and defects.

H. Equipment Installer Required. No person other than an individual holding a current and valid equipment installer's license shall be registered as an equipment contractor by the department of codes administration unless such person employs the full-time services of an individual holding a current and valid equipment installer's license duly issued by the metropolitan board of electrical examiners and appeals. Each party to a joint venture shall employ at least one licensed equipment installer. Licensed equipment installers employed by all parties must sign all permits.

I. Existing Registered Electrical Equipment Contractors. Every person, firm or corporation which is validly registered with the department of codes administration as a metropolitan electrical equipment contractor on June 4, 1991, the date of adoption of the ordinance codified in this section, shall be registered as an electrical equipment contractor under the provisions of this chapter; providing, however, that the electrical equipment contractor shall submit within one hundred twenty days the name of the individual required in subsection B above and comply with the requirements of Section 6.20.160.

J. Affidavit. Each applicant for an electrical equipment contractor's registration proposing to employ the required equipment installer shall submit an affidavit to the metropolitan board of electrical examiners and appeals, signed by the applicant, specifying the name of the equipment installer responsible for the work of the electrical contractor's company or business and stating that he will permit the equipment installer to have access to all records pertaining to permits and defects.

K. Low-Voltage Wiring Installer Required. No person other than an individual holding a current and valid low-voltage wiring installer's license shall be registered as a low-voltage contractor by the department of codes administration unless such person employs the full-time services of an individual holding a current and valid low-voltage wiring installer's license duly issued by the metropolitan board of electrical examiners and appeals. Each party to a joint venture shall employ at least one licensed low-voltage wiring installer. Licensed low-voltage wiring installers employed by all parties must sign all permits.

L. Affidavit. Each applicant for a low-voltage contractor's registration proposing to employ the required low-voltage wiring installer shall submit an affidavit to the metropolitan board of electrical examiners and appeals, signed by the applicant, specifying the name of the low-voltage wiring installer responsible for the work of the low-voltage wiring contractor's company or business and stating that he will permit the low-voltage wiring installer to have access to all records pertaining to permits and defects.

M. "Full-time services" in subsections E, H and K above shall be defined to be provided by an individual:

1. Who reports during normal working hours to a place of business established by the electrical contractor, equipment contractor or low-voltage contractor. It must be possible to contact the individual by telephone at the place of business;

2. Who receives all benefits which are offered to other employees by the electrical contractor, equipment contractor or low-voltage contractor;

3. For whom the electrical contractor, equipment contractor or low-voltage contractor withholds federal income tax and pays FICA taxes and workers' compensation. (Ord. 91-1558 § 20, 1991: prior code § 14-1-72)

6.20.140 Registration—Required when.

A. It shall be the duty of every person who shall make contracts for the installation, repair, addition or alteration of any electrical system or any part thereof, for which a permit is required, and every person making such contracts or subletting the same or any part thereof, to register, as required, with the department of codes administration.

B. Each joint venture shall comply with Section 6.20.150 and all Metro ordinances and state laws. Each party to a joint venture must have the appropriate classification. (Ord. 91-1558 §§ 2 (part), 21, 1991: prior code § 14-1-73)

6.20.150 Duties of electrical contractors, equipment contractors and low-voltage contractors.

A. Every person holding an electrical contractor's registration, equipment contractor's registration or low-voltage contractor's registration shall conform strictly to the Metropolitan Electrical Code and applicable ordinances. Before any person, firm or corporation shall engage in the business of electrical contracting, equipment contracting or low-voltage contracting as herein defined, that person or entity shall comply with all other applicable ordinances of the metropolitan government of Nashville and Davidson County.

B. It shall be the responsibility of the electrical, equipment contractor or low-voltage contractor to install all work for which a permit is required in accordance with all requirements of the Metropolitan Electrical code and all other applicable ordinances of the metropolitan government.

C. No electrical work shall be begun until a permit has been obtained by the master electrician, equipment installer or low-voltage wiring installer.

D. 1. The electrical contractor, equipment contractor or low-voltage contractor shall register with the department of codes administration the following:

a. Name of the business, business street address, zip code, local telephone or toll-free number and individual's name, as required in subsection B of Section 6.20.130;

b. Name of the licensed master electrician, equipment installer or low-voltage wiring installer, business street address, zip code and local telephone number where the master electrician, equipment installer or low-voltage wiring installer may be contacted during normal working hours.

2. A copy of the above shall be kept at all times in the office of the department of codes administration.

E. 1. It shall be the responsibility of the electrical contractor, equipment contractor or low-voltage contractor to furnish to the department of codes administration a permit bond in the amount of forty thousand dollars, conditioned to conform to the requirements of this chapter and all applicable laws, ordinances, rules, and regulations of the metropolitan government relating to work which is performed by the principal pursuant to a permit issued under this bond, or for work performed by the principal for which a permit should have been obtained prior to the commencement of such activity; and to indemnify the metropolitan government and property owners against any and all loss suffered by them by reason of the failure of such contractor to comply with such laws, ordinances, rules and regulations. Such bond shall be continuous and may not be canceled without at least ten days' prior notice, in writing, to the director of codes administration. The liability of the surety shall continue to attach to work performed pursuant to any permit issued prior to the termination date of the bond, even if the noncomplying act should occur after the termination date of the bond. The liability of the surety for any and all claims, suits or actions under this bond shall not exceed the bond penalty of forty thousand dollars. Regardless of the number of years this bond may remain in force, the liability of the surety shall not be cumulative and the aggregate liability of the surety for any and all claims, suits or actions under this bond shall not exceed forty thousand dollars. The bond shall be issued by a U.S. Treasury-listed corporate surety or a Tennessee domestic

insurance company on forms provided by the department of codes administration.

2. The conformance bond shall be submitted with the required application for registration or within one hundred twenty days of the adoption of the ordinance codified herein for existing registered electrical contractors and existing registered electrical equipment contractors.

F. It shall be the responsibility of the electrical contractor, equipment contractor or low-voltage contractor to furnish to the department of codes administration a certificate of general liability insurance issued by a Tennessee-licensed company which provides a minimum of three hundred thousand dollars per occurrence with combined single limit bodily injury and property damage coverage. The certificate of insurance may not be canceled without at least thirty days' prior notice, in writing, to the director of codes administration. The certificate of insurance must be submitted with the required application for registration.

G. It shall be the responsibility of the electrical contractor, equipment contractor or low-voltage contractor to furnish to the department of codes administration proof that all required privilege licenses have been obtained.

H. An electrical contractor, equipment contractor or low-voltage contractor shall not furnish permits for electrical work to any person, firm or corporation other than his/her own. All work done under any permit shall be performed under the supervision of the licensed master electrician, equipment installer or low-voltage wiring installer who obtained the permit. Work for which the permit is required cannot be subcontracted under any condition to other than a registered electrical contractor, equipment contractor or low-voltage contractor, who shall obtain his/her own permit.

I. 1. It shall be the responsibility of the electrical contractor, equipment contractor or low-voltage contractor to promptly notify in writing any other electrical contractor, equipment contractor or low-voltage contractor who proposes to hire or engage him/her to perform any work for which an electrical permit is required of the following:

a. All parties who contract to perform work for which an electrical permit is required must be registered electrical contractors, equipment contractors or low-voltage wiring contractors;

b. All parties who contract to perform work for which an electrical permit is required must employ the full-time services of a licensed master electrician, equipment contractor or low-voltage wiring installer.

2. A copy of the written notification shall be provided to the department of codes administration upon written request from the department of codes administration.

J. Each electrical contractor, equipment contractor or low-voltage contractor shall promptly notify in writing the party with whom he/she has contracted for electrical work of any known defects in electrical plans or specifications prepared by others.

K. Each electrical contractor, equipment contractor or low-voltage contractor shall maintain for a period of two years a file of all deficiencies in work, as identified to him/her in writing by representatives of the department of codes administration or by the master electrician, equipment installer or low-voltage wiring installer. It shall be the responsibility of the electrical contractor, equipment contractor or low-voltage contractor to assist the master electrician, equipment installer or low-voltage wiring installer in promptly correcting all deficiencies in work.

L. Each electrical contractor, equipment contractor or low-voltage contractor shall instruct all of his/her employees to immediately identify themselves and produce proper identification when requested by representatives of the department of codes administration. Failure of persons performing electrical work to identify themselves upon request shall be cause for placing a stop work order on the project.

M. It shall be the responsibility of the electrical contractor, equipment contractor or low-voltage contractor to produce payroll and other records when requested in writing by the metropolitan board of electrical examiners and appeals. Such records shall show the names of the individuals and the calendar dates when work was performed on all projects for which a permit is required.

N. All vehicles utilized by a metropolitan electrical contractor, equipment contractor or low-voltage contractor and/or the employees thereof shall have conspicuously painted on the sides of such vehicles in a contrasting color the following information:

1. The full name of the firm to which the vehicle belongs, in lettering of at least three inches;

2. The registration number of the metropolitan electrical contractor, equipment contractor or low-voltage contractor, in lettering of at least two inches;

3. The wording "Nashville, Tennessee" in lettering of at least two inches.

O. In the event vehicles are leased by a metropolitan electrical contractor, equipment contractor or low-voltage contractor, such leased vehicle, in lieu of the painting thereon of the information required by subsection N of this section, may be equipped with securely attached temporary signs placed on both sides thereof which comply with the requirements of subsection N above.

P. Failure to comply with any of the duties listed above shall constitute grounds for suspension or revocation of the electrical contractor's registration, equipment contractor's registration or low-voltage contractor's regis-

tration. (Ord. 94-1226 § 1, 1994; Ord. 91-1558 § 22, 1991: prior code § 14-1-74)

6.20.160 Change of status notification required—Failure to employ authorized contractors unlawful.

A. It shall be the responsibility of the electrical contractor, equipment contractor or low-voltage contractor to notify immediately, in writing, the metropolitan board of electrical examiners and appeals of the termination of employment, for whatever reason, of the master electrician, equipment installer or low-voltage wiring installer or of any other change in the names, addresses or telephone numbers required in subsections B, C and G of Section 6.20.130, and subsection D of Section 6.20.150.

B. In the event of termination of employment or revocation of the license of the master electrician, equipment installer or low-voltage wiring installer, the electrical contractor, equipment contractor or low-voltage contractor shall secure the full-time services of another master electrician, equipment installer or low-voltage wiring installer within thirty days. If the full-time services of another master electrician, equipment installer or low-voltage wiring installer are not obtained within thirty days, the electrical contractor's registration, equipment contractor's registration or low-voltage contractor's registration shall be suspended until a new master electrician, equipment installer or low-voltage wiring installer is employed, subject to an appeal before the metropolitan board of electrical examiners and appeals. (Ord. 91-1558 § 23, 1991: prior code § 14-1-75)

6.20.170 Work stoppage order.

A. In the event an electrical contractor, as defined in subsection B of Section 6.20.130, ceases to employ the services of a master electrician, the director of codes administration shall notify such electrical contractor that he shall no longer be entitled to secure permits and that any work authorized and not completed, under any permit issued to such contractor, shall be stopped within forty-eight hours after notice, subject to an appeal by such contractor to the metropolitan board of electrical examiners and appeals with the forty-eight-hour period, excluding Saturdays, Sundays and legal holidays falling within the forty-eight-hour period.

B. Such notice, by the director, shall be in writing and shall be delivered to the electrical contractor by certified mail, or served personally on such contractor. (Ord. 91-1558 § 2 (part), 1991; prior code § 14-1-76)

6.20.180 Appeal from work stoppage order.

Upon written notice of an appeal to the board of electrical examiners and appeals, involving a work stoppage under the circumstances as set forth in Section 6.20.170, the board shall meet in special session and shall take such action as may be deemed necessary to assure that the intent and purposes of this chapter and Chapters 2.76, 6.40 and 16.20 are complied therewith. In each such instance, the action of the board shall be final, subject to such relief as the aggrieved party may have at law or in equity. (Prior code § 14-1-77)

Article III. Equipment Installers

6.20.200 Equipment installer defined.

A. For the purposes of this chapter and Chapters 2.76, 6.40 and 16.20, an "equipment installer" means any person who installs and services utilization equipment, other than industrial, normally built in standard sized sizes or types, which is installed or connected as a unit to perform one or more functions including, but not limited to, clothes drying, air conditioning, heating and electric signs.

B. For the purpose of this chapter and Chapters 2.76, 6.40 and 16.20, an "equipment installer" means any person who engages in the business of contracting for the sale, installation and service of utilization equipment as defined in subsection A of this section. (Prior code § 14-1-79)

6.20.210 Registration required.

It shall be the duty of every person who shall make contracts for the installation, repair, addition or alteration of any electrical appliance or equipment, for which a permit is required, to register with the department of codes administration, on forms provided by the director of codes administration, providing the business address of the person, the effective date of the conformance bond, the expiration dates of all required privilege licenses and signatures of all persons authorized to make application for permits for such person. (Prior code § 14-1-80)

6.20.220 Licensure requirements.

A. In order to comply with the requirements of this chapter for licensure, an equipment installer shall successfully complete a written examination, administered by the metropolitan board of electrical examiners and appeals, designed to test the applicant's ability and knowledge in his/her field of equipment installation. The board shall certify the results of the applicant's competency to the director of the department of codes administration. Such examination shall be prerequisite to licensure as an equipment installer.

B. Every person who, on June 4, 1991, the date of the adoption of the ordinance codified herein, is certified as an equipment installer, shall be licensed as an equipment installer under the provisions of this chapter. (Ord. 91-1558 § 25, 1991: prior code § 14-1-81)

6.20.240 Permitted activities and duties.

For the purpose of this chapter, an equipment installer's license shall convey the privilege of installing equipment and the electrical wiring of equipment, according to the following requirements:

A. HVAC Units, Equipment and Appliances.

1. All HVAC units must be installed and wired in accordance with Articles 42, 424, 430, 440 and 200 through 250 of the National Electrical code, and all other applicable chapters of that code. The equipment installer under this section shall be permitted to install and connect the electrical wiring from the last disconnecting means provided by an electrical contractor.

2. In conjunction with this section, an equipment installer shall be permitted to install branch circuit wiring for the following:

a. The illumination for all working spaces where equipment must be serviced;

b. One hundred twenty-five volt, single-phase fifteen or twenty ampere-rated receptacle outlet at an accessible location for the servicing of rooftop-mounted heating or air-conditioning equipment;

c. The one hundred twenty-five volt receptacle outlet for the condensate pump on air-conditioning equipment;

d. The one hundred twenty-five volt, twenty-ampere single-pole toggle switch for disconnecting the electrical power to a gas furnace.

B. Swimming Pools and Swimming Pool Equipment.

1. All swimming pool wiring and the installation of swimming pool equipment shall comply with Article 680 of the National Electrical Code.

2. A licensed equipment installer for swimming pool wiring and equipment shall be permitted to install all grounding and bonding of a swimming pool and equipment in accordance with Article 680 of the National Electrical Code.

3. A licensed equipment installer shall be permitted to install and connect the electrical wiring to the swimming pool equipment from the last disconnecting means provided by an electrical contractors.

C. Electric Signs.

1. All electric sign installations and wiring shall be installed in accordance with Article 600 of the National Electrical Code.

2. Each equipment installer for electric signs shall be permitted to install the sign and connect the electrical wiring from the last disconnecting means provided by an electrical contractor.

D. Gasoline Dispensing Units.

1. All gasoline dispensing units must be installed and wired in accordance with Article 514 of the National Electrical Code.

2. An equipment installer for gasoline dispensing units shall be permitted to install the equipment and connect the electrical wiring from the last disconnecting means provided by an electrical contractor.

E. Installation of Other Electrical Equipment. Equipment installers shall install equipment only in accordance with the National Electrical Code and the Metropolitan Electrical Code. No equipment installer is permitted to install the main source of power to any type of equipment or installation, as defined in this article. The main source of power for any type of equipment from any electrical source must be installed by an electrical contractor. (Ord. 91-1558 § 27, 1991: prior code § 14-1-83)

Article IV. Master Electricians, Equipment Installers and Low-Voltage Wiring Installers

6.20.250 Requirements for license.

An applicant for a license as a master electrician, equipment installer or low-voltage wiring installer must meet the following requirements for licensure:

A. Education/Experience.

1. Master Electrician.

a. The applicant must be a graduate electrical engineer from an accredited university or college with at least two years' actual experience in the electrical construction industry; or

b. The applicant must have at least six years of working experience in the electrical construction industry covering the actual installation of electrical work.

2. Equipment Installers. The applicant must have at least three years of working experience in the industry covering the actual installation of equipment.

3. Low-Voltage Wiring Installers. The applicant must have at least three years of working experience in the industry covering the actual installation of equipment. Schooling may be substituted for up to a maximum of two years of experience as long as the schooling is directly connected with the type of equipment being installed.

4. Evidence of Experience. All applicants must provide satisfactory evidence of the required years of experience, and such evidence must be approved by the metropolitan board of electrical examiners and appeals.

B. Examination. Applicants shall be examined by written examination by the metropolitan board of electrical examiners and appeals. A grade of seventy shall be required for the issuance of a license.

C. Existing "Certified" Electrical Contractors. Every person who, on June 4, 1991, the date of adoption of the ordinance codified in this section, holds a valid "certified" electrical contractor's certificate, shall be licensed as a master electrician under the provisions of this chapter. (Ord. 91-1558 § 28 (part), 1991: prior code § 14-1-84)

6.20.260 Duties.

A. It shall be the duty of the master electrician, equipment installer or low-voltage wiring installer to insure that the electrical work for which he/she obtains permits is installed in accordance with all requirements of the Metropolitan Electrical Code and all other applicable ordinances. The master electrician, equipment installer or low-voltage wiring installer shall accordingly personally supervise, on a routine basis, the work being performed under a permit and shall verify that work has been done in accordance with applicable codes and ordinances before an inspection is requested.

B. No electrical work shall be begun until a permit has been obtained by the master electrician, equipment installer or low-voltage wiring installer.

C. It shall be the responsibility of the master electrician, equipment installer or low-voltage wiring installer to review the electrical plans and specifications on all work for which a permit is required. The master electrician, equipment installer or low-voltage wiring installer shall promptly notify the electrical contractor, equipment contractor or low-voltage contractor in writing of any known defects in electrical plans or specifications.

D. The master electrician, equipment installer or low-voltage wiring installer shall be responsible for requesting and securing inspections for all work for which a permit was obtained under his/her license.

E. The master electrician, equipment installer or low-voltage wiring installer shall meet with the metropolitan electrical inspector and others, when requested, at the job site.

F. The master electrician, equipment installer or low-voltage wiring installer shall promptly notify the electrical contractor, equipment contractor or low-voltage contractor in writing of any deficiencies in the work as identified to him/her in writing by a metropolitan electrical inspector. It shall be the responsibility of the master electrician, equipment installer or low-voltage wiring installer to promptly correct such deficiencies in the work.

G. A master electrician, equipment installer or low-voltage wiring installer shall not furnish permits for electrical work to any person, firm or corporation other than the electrical contractor, equipment contractor or low-voltage contractor with whom his/her license is registered.

Failure to comply with any of the duties listed above shall constitute grounds for restriction, suspension or revocation of the master electrician's, equipment installer's or low-voltage wiring installer's license. (Ord. 91-1558 § 28 (part), 1991: prior code § 14-1-85)

6.20.270 Active registration required.

A. It shall be the duty of every person licensed as a master electrician, equipment installer or low-voltage wiring installer to register with the department of codes administration the name of the electrical contractor, equipment contractor or low-voltage contractor for whom he/she will obtain permits. No person shall work as a master electrician, equipment installer or low-voltage wiring installer prior to such registration.

B. The master electrician, equipment installer or low-voltage wiring installer shall state, in his/her application, any employer for whom he/she is currently working, in any capacity. It shall be the duty of the master electrician, equipment installer or low-voltage wiring installer to keep this statement of employment current at all times. (Ord. 91-1558 § 28 (part), 1991: prior code § 14-1-86)

6.20.280 Licenses placed on inactive status—Reactivation.

A. A master electrician, equipment installer or low-voltage wiring installer may apply to the department of codes administration to place his/her license on an inactive status.

B. The license shall not become inactive until all work under permits obtained by the license holder has been satisfactorily completed or until all permits have been canceled.

C. Inactive licenses may be renewed by submitting an application to the department of codes administration. After a waiting period of ninety days from the date the application was accepted by the department of codes administration, his/her certificate shall be reactivated upon payment of current fees. (Ord. 91-1558 § 28 (part), 1991: prior code § 14-1-87)

6.20.290—6.20.350 Reserved.

(Ord. 91-1558 § 28 (part), 1991: prior code § 14-1-88—14-1-94)

Article V. Maintenance Electrician

6.20.360 Limitation on work—Penalties for violations.

A. No electrical work for which a permit is required may be performed by a maintenance electrician. It shall be a misdemeanor for a maintenance electrician to perform electrical work for which a permit is required.

B. It shall be a misdemeanor for any person to order or otherwise direct a maintenance electrician to perform electrical work for which a permit is required. (Ord. 91-1558 § 29, 1991: prior code § 14-1-95)

Chapter 6.24

FILMS AND LIVE ENTERTAINMENT

Sections:

6.24.010 Safety rules and conditions.

6.24.010 Safety rules and conditions.

All business establishments showing films or staging and showing live entertainment to patrons on an individual booth-by-booth, or individual room-by-room, basis shall be subject to the following:

A. All walls, partitions and doors shall be of either noncombustible material or material of not less than one hour fire-resistant time rating.

B. All furniture, furnishings, rugs and carpets shall be of a fabric or material with a flame spread rating of seventy-five or less, according to the ASTME 84 Test.

C. Each room or booth shall have not less than thirty square feet of floor area for each occupant.

D. All aisles shall not be less than fifty inches in width, and no such aisle shall have a dead end.

E. Each room or booth shall have at least two lighted exits within the constant and unobstructed view of the occupant or occupants, which exits shall lead directly to the outside of such business establishment.

F. There shall be no locks on doors in rooms or booths which could prevent a person from entering or leaving such room or booth.

G. All electrical equipment shall be grounded and no electrical receptacles or outlets shall be serviced by extension cords.

H. The light level throughout each booth, room and aisle shall not be less than 1.0 footcandle measured at the floor level. Such lights shall be placed not less than three feet above the floor level. (Prior code § 7-1-9)

Chapter 6.26

FRANCHISES FOR FIBER OPTIC COMMUNICATIONS SERVICES

Sections:

6.26.010 Declaration of need.
6.26.020 Definitions.
6.26.030 Grant of franchise.
6.26.040 Construction.
6.26.050 As built drawings.
6.26.060 Construction standards.
6.26.070 Suspension or revocation of construction permit.
6.26.080 Adjustment of utility facilities.
6.26.090 Adjoining property owners.
6.26.100 Emergency or disaster.
6.26.110 Moving wires.
6.26.120 Temporary removal of facilities for demolition of buildings.
6.26.130 Joint use.
6.26.140 Removal of city property.
6.26.150 Reservation of rights.
6.26.160 Protection of trees.
6.26.170 Abandonment of right-of-way.
6.26.180 Rights of abutting landowners.
6.26.190 Relocation of the system.
6.26.200 Bonds.
6.26.210 Insurance requirements.
6.26.220 Indemnification.
6.26.230 Services to the metropolitan government.
6.26.240 Compensation to the metropolitan government.
6.26.250 Accounts, records and reports.
6.26.260 Term of franchise.
6.26.270 Extension of term.
6.26.280 Renewal.
6.26.290 Assignment or lease of franchise.
6.26.300 Violations.
6.26.310 Revocation and termination.
6.26.320 Service standards.
6.26.330 Preferential or discriminatory practices prohibited.
6.26.340 Conflict with other laws.
6.26.350 Compliance with applicable laws and ordinances.
6.26.360 Tennessee law governs.
6.26.370 Metropolitan government taking part in litigation.
6.26.380 Office location.
6.26.390 Severability.

6.26.010 Declaration of need.

That the metropolitan council finds and declares that, within metropolitan Nashville and Davidson County, the public necessity requires the development of competing telephone service in the form of fiber optic communications capability, and that numerous private companies are currently able and willing to provide such service. (Ord. 94-1103 § 1, 1994)

6.26.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Anniversary date" means the date on which a franchise agreement is fully executed.

"Compensation year" means each calendar year during the term of a franchise agreement in which compensation is paid to the metropolitan government.

"Council" or "metropolitan council" means the council of the metropolitan government of Nashville and Davidson County.

"Day" or "days" means a calendar day or days.

"Director of finance" means the position of director of finance created by Section 8.102 of the Metropolitan Charter or a successor position, or an acting director of finance, or the designee of the director of finance.

"Director of information systems" means the position of information systems director created under Section 2.24.115 of the Metropolitan Code or a successor position, or an acting information systems director, or the designee of the information systems director.

"Director of public works" means the position of director of public works created by Sections 8.404 and 8.405 of the Metropolitan Charter or a successor position, or an acting director of public works or the designee of the director of public works.

"FCC" means the Federal Communications Commission, or any successor agency.

"Fiber optic communications" or "fiber optic services" means telecommunication systems as defined in "system" or "telecommunication system" found in this section.

"Franchise" means the nonexclusive authorization granted as provided in this chapter to occupy or use the streets and/or public rights-of-way within metropolitan Nashville and Davidson County for the construction, operation and maintenance of a fiber optic telecommunications system within all or a portion of metropolitan Nashville and Davidson County.

"Franchise agreement" means a fully executed and notarized contractual agreement by and between the metropolitan government and grantee, wherein grantee accepts the provisions stated in this chapter.

"Grantee" means any company providing access or local telecommunications service using facilities either constructed, owned or leased for the purpose of providing voice, data or video telecommunication service.

"Gross revenue" means all receipts collected by the grantee for all communications and related operations and services within the corporate limits of the metropolitan government, as well as any other revenue arising from operation or possession of this franchise. By way of example, but without limitation, "gross revenue" includes installation charges, access charges paid to the grantee by other carriers, franchise fees and occupation taxes surcharged to customer, and the lease or resale of lines or circuit paths to third parties. "Gross revenue" does not include revenue uncollectible from customers.

"Metropolitan government" means the metropolitan government of Nashville and Davidson County.

"PSC" means the Tennessee Public Service Commission or any successor agency.

"Public right-of-way" means real property subsurface and air rights acquired by the metropolitan government by any lawful means and includes the surface and that area below the surface which is necessary to support the public street, alley, path, bridge, tunnel, sidewalk, planting strip, median, waterway, dock, wharf, pier, public ground or other public right-of-way. Public right-of-way also includes the surface of any public street, alley, path, bridge, tunnel, sidewalk, planting strip, median, waterway, dock, wharf, pier, public ground or other public right-of-way acquired by the metropolitan government. No reference herein or in any franchise for use of any public right-of-way shall be deemed to be a representation or guarantee by the metropolitan government that its title to any public right-of-way or any improvement or object located therein is sufficient to permit or authorize its use by the grantee.

"System" or "telecommunications system" means grantee's network of cables, wires, lines, towers, wave guides, optic fiber, microwave, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing audio, video or other forms of electronic signals to or from subscribers or locations within metropolitan Nashville and Davidson County, but not including the offering to the public cable television services as defined under the Cable Communications Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, and/or any franchise granted by the metropolitan government pursuant to said Act.

"Urban forester" means the position of urban forester created by ordinance of the metropolitan council, or any

successor, or an acting urban forester or the designee of the urban forester. (Amdt. 1(1), (2), (3) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 2, 1994)

6.26.030 Grant of franchise.

A. The metropolitan government warrants that it has the right to issue a nonexclusive, revocable franchise to a grantee to have, acquire, construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under the public streets, alleys and rights-of-way of the city, a fiber optics telecommunications system (the "system"). Any grantee of such franchise agrees that it shall not now or at any time after a franchise is granted challenge this right in any way or in any metropolitan, state or federal court; provided, that in the event the federal or state government acquires or assumes exclusive jurisdiction over the issuance or regulation of fiber optic telecommunications franchises, grantee agrees that a franchise issued pursuant to the provisions herein shall remain in full force and effect as a binding contract between the grantee and the metropolitan government to the extent permitted by law.

B. Application for franchise.

1. Any franchise application shall be made to the council through the metropolitan clerk and introduced in the council in the manner provided by the rules of the council.

2. Each such application shall be kept on file with the metropolitan clerk. Any intentional misrepresentation in such application shall be grounds for the rejection of the franchise. The application shall be a part of any franchise grant or agreement under this chapter.

3. Each application shall include a map and description of the proposed service area for the grantee.

4. The mandatory referral to the metropolitan planning commission required by Section 11.505 of the Metropolitan Charter shall apply to each franchise application.

5. No ordinance granting or revoking a franchise shall be passed by the council without a full public proceeding affording due process in which the grantee's legal, character, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements have been reviewed and approved either by the full council or a committee composed of members of the council only.

C. Franchise—Grant Conditions, Terms.

1. All franchises, and all renewals, extensions and amendments thereof shall be granted only by ordinance. No such ordinance shall be adopted before the application therefor has been filed with the council through the metropolitan clerk.

2. Grantee shall not provide cable services or operate a cable system as defined in the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C.A. § 521, et seq., as amended) or as recognized by the Federal Communications Commission (the FCC) without first obtaining a separate cable franchise from the metropolitan government and shall not allow the use of the system by a cable system that has not been granted a franchise to operate a cable communications system by the metropolitan government. Nor shall any provider of cable services or grantee of a cable television franchise operate or provide a telecommunications service or facilities except pursuant to the ordinance codified in this chapter.

3. Grantee shall not provide services directly regulated by the Tennessee Public Services Commission (the PSC) under the laws of Tennessee unless duly authorized by the PSC.

4. Franchises granted pursuant to this chapter do not require grantee to provide ubiquitous service throughout Davidson County as a public service provided.

5. Franchises shall be evidenced by a contract adopted by the metropolitan council, which contract shall be submitted to the mayor in the manner provided for in the Charter of the Metropolitan Government presently in effect or hereafter adopted. (Amdt. 1(4), (5), (6) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 3, 1994)

6.26.040 Construction.

A. Licenses and permits. The grantee shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair the system, and to construct, maintain and repair any part thereof prior to commencement of any such activity.

Issuance of a permit by any agency of the metropolitan government as to the construction and installation of any portion of grantee's system does not waive other applicable requirements of federal or Tennessee law, and grantee shall comply with such other requirements.

B. Subject to Police Power. The construction, expansion, reconstruction, excavation, use, maintenance and operation of the system shall be subject to all lawful police regulations of the metropolitan government and performed in accordance with all laws and regulations of the metropolitan government for utility location and excavation in public rights-of-way presently in effect or hereafter adopted. In addition to the duty under any other law or regulation of the metropolitan government, not less than seven days prior to filing of a request for a construction permit, grantee shall provide to the director of public works a copy of all the construction work plans and draw-

ings for the system, or any segment or expansion thereof. Grantee shall not proceed with construction until the plans and drawings have been approved in writing by the above-listed metropolitan government official. (Ord. 94-1103 § 4, 1994)

6.26.050 As built drawings.

Grantee shall submit to the director of public works "as built" drawings of the portions of grantee's system located along the public right-of-way of a size and material satisfactory to the director of public works within one hundred twenty days after completion of construction of such portions. Grantee shall update such drawings within sixty days whenever material changes are made to grantee's system which impact the public right-of-way. Said drawings, set forth by utility quarter sections, shall at a minimum include cable routings and the location of amplifiers, power supplies and system monitor test points. (Amdt. 1(7) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 5, 1994)

6.26.060 Construction standards.

A. All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the system shall be subject to and governed by all laws, rules, and regulations of the metropolitan government in accordance with the provisions of Chapter 13.20 of the Metropolitan Code, except that the provisions of Sections 13.20.020 and 13.20.030 shall not be applicable. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its system.

All installations shall be underground in those areas of the metropolitan government where public utilities providing telephone and electric service are underground at the time of installation. In areas where either telephone or electric utility facilities are above ground at the time of installation, grantee may install its service above ground; provided, that at such time as those facilities are required to be placed underground by the metropolitan government, or are placed underground, grantee shall likewise place its services underground without additional cost to the metropolitan government.

B. Electrical standards. Grantee shall at all times comply fully with provisions of the electrical code of the metropolitan government and with Chapter 6.20 of the Metropolitan Code of Laws.

C. Interference With Persons, Improvements, Public and Private Property and Utilities. Grantee's system and facilities, including poles, lines, equipment and all appurtenances, shall be located, erected and maintained so that such facilities shall:

1. Not endanger or interfere with the health, safety or lives of persons;

2. Not interfere with any improvements the metropolitan government or state may deem proper to make;

3. Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction or repair;

4. Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction or repair; nor

5. Not obstruct, hinder or interfere with any gas, electric, water or telephone facilities or other utilities within the metropolitan government.

D. Protect Structures. In connection with the construction, operation, maintenance, repair or removal of the system, the grantee shall, at its own cost and expense, protect any and all existing structures and improvements, including landscaping and trees belonging to the metropolitan government, and all designated historical landmarks, as well as all other structures within any designated historical district. The grantee shall obtain the prior approval of the metropolitan government before altering or crossing any water main, sewerage or drainage system, or any other municipal, state or federally owned structure in the streets required because of the presence of the system in the streets. Any such alteration shall be made by the grantee at its sole cost and expense, and in a manner prescribed by the metropolitan government. The grantee shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition in a manner as may be specified by the metropolitan government, any street or any municipal, state or federally owned structure involved in the construction of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of the grantee pursuant to its franchise.

E. Erection, Removal and Use of Poles. No poles shall be erected by grantee without prior approval of the metropolitan government with regard to location, height, types and any other pertinent aspect. Such pole or structures shall be removed or modified by grantee at its own expense whenever the metropolitan government determines that the public convenience would be enhanced thereby. Approval under this section shall required the written approval of the department of public works.

F. Upon request of the metropolitan government or other authority of competent jurisdiction, grantee shall remove and abate any portion of the system or any facility that is dangerous to life or property, and in case grantee, after notice, fails or refuses to act, the metropolitan government may remove or abate the same, at the sole cost

and expense of grantee, all without compensation or liability for damages to grantee. (Amdt. 1(8), (9) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 6, 1994)

6.26.070 Suspension or revocation of construction permit.

The director of public works may suspend or revoke any permit issued by the department of public works or take any action he deems necessary, including the stopping of work, should grantee violate the terms of said permit, until said violation has been corrected to said director's satisfaction. (Ord. 94-1103 § 7, 1994)

6.26.080 Adjustment of utility facilities.

In the event that the location of grantee's system will require an adjustment of the installation of existing public or private utility facilities, grantee must obtain written consent of the owner of such utility, including, where applicable, all relevant metropolitan government departments to such adjustment and make such arrangements for the payment or reimbursement of the cost of such adjustment as are satisfactory to the owner of such utility, including, where applicable, all relevant metropolitan government departments. No permit for construction will be issued until the director of the department of public works is satisfied that the requirements of this section have been satisfied. In no case shall grantee be entitled to perform such adjustment or disturb such utility facilities without the written consent of the owner of such utility. (Amdt. 1(10) to Ord. 94-1103, 7/19/94; Ord. 94/1103 § 8, 1994)

6.26.090 Adjoining property owners.

All of grantee's system shall be so installed and located so as to cause minimum interference with the rights and appearance and reasonable convenience of adjoining property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. Grantee shall at all times employ reasonable care, and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public. (Ord. 94-1103 § 9, 1994)

6.26.100 Emergency or disaster.

In case of emergency or disaster, grantee shall, upon request of the metropolitan government, make available its facilities to the metropolitan government, without cost, for emergency use. (Ord. 94-1103 § 10, 1994)

6.26.110 Moving wires.

If determined to be necessary to promote the public health, welfare and safety, in case of fire, disaster or other emergency, the metropolitan government may, in its reasonable discretion, take such action with respect to grantee's system in the streets or in metropolitan government buildings as it deems necessary to promote the public health, welfare and safety, in which event the metropolitan government shall not be liable therefor to the grantee. (Amdt. 1(11) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 11, 1994)

6.26.120 Temporary removal of facilities for demolition of buildings.

Upon the request of a person holding a permit issued by the metropolitan government for the moving or demolition of a building, and at least ten days' notice, grantee shall temporarily raise, lower or remove its facilities to permit the removal or demolition of such building. The expense of such temporary removal, raising or lowering of facilities shall be paid by the person requesting the same and grantee shall have the authority to require such payment in advance; provided, however, that no payment (direct or indirect) shall be required of the metropolitan government. (Ord. 94-1103 § 12, 1994)

6.26.130 Joint use.

Every public utility and every grantee may be required by the metropolitan government to permit joint use of its property and appurtenances located in the streets, alleys, and public places of the metropolitan government by other public utilities and grantees, in so far as such joint use may be reasonably practicable, and in accordance with the provisions of the National Electrical Safety Code upon payment of reasonable rental therefor; provided, that in the absence of agreement, upon application by any public utility or grantee, the council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefor, which award shall be final. Grantee may require any such person or entity to furnish evidence of adequate insurance covering grantee and adequate bonds covering the performance of the person or entity attaching to grantee's facilities as a condition precedent to granting permission to any such person or entity to attach wires or equipment to grantee's facilities; provided, that grantee's requirements for such insurance shall be reasonable. (Amdt. 1(12) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 13, 1994)

6.26.140 Removal of city property.

No property of the metropolitan government is to be removed from the right-of-way, including signage on utility poles, without prior approval from the metropolitan government. (Ord. 94-1103 § 14, 1994)

6.26.150 Reservation of rights.

The metropolitan government reserves the right to exercise its police and/or proprietary powers to modify, vacate or transfer any right-of-way in use by grantee for a public purpose. At grantee's own risk, the metropolitan government has the predominant right to use its right-of-way in the placement, maintenance and repair of sewers, water mains and other public utilities or to relocate or remove grantee's system where the metropolitan government determines that the public convenience and/or necessity would be enhanced or for any other public purpose, including, but not limited to the use of any right-of-way used by grantee for public transportation purposes or where the director of public works determines there is an emergency. The permits referred to in Section 6.26.040 may be amended or revoked in whole or in part by the issuing department whenever such action is necessary or advisable for a public purpose. Grantee shall make no claims for costs or damages against the metropolitan government by reason of such removal or relocation. Upon thirty days' written notice to grantee of partial or complete revocation of such permit from the director of public works, grantee shall remove, modify, replace or relocate its facilities as required at its own expense. In the event grantee does not remove, modify, replace or relocate its facilities as required by said notice within thirty days as aforesaid, the director of public works may cause the same to be done at grantee's expense and all expenses incurred or damages paid by the metropolitan government on account of such action shall be paid by grantee on demand. Grantee shall remove, replace or modify, at its own expense, the installation of any of its facilities as may be deemed necessary by any other appropriate governmental authority to meet such authority's proper responsibilities. In the event the metropolitan government exercises its predominant right to use any right-of-way used by grantee for a public purpose, the metropolitan government shall reasonably cooperate with grantee in finding an alternate site for any telecommunications facilities removed and in avoiding disruption to grantee's telecommunications system to the extent not reasonably required by the metropolitan government. In an emergency, as determined by the director of public works, the metropolitan government may order grantee to remove or relocate its facilities within forty-eight hours. If the metropolitan government exercises any of its rights pursuant to this section, grantee shall have the option, upon notice to the director of information services, of abandoning the portion of its telecommunications system to be so removed or relocated and deleting such portion from the public right-of-way. (Amdt. 1(13) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 15, 1994)

6.26.160 Protection of trees.

Trimming of trees and shrubbery within the public right-of-way to prevent contact with grantee's facilities shall be done only in accordance with the standards approved by the urban forester in accordance with the ordinances of the metropolitan government. Removal or pruning of any tree or shrub shall only be done upon issuance of a permit by the urban forester. When trees or shrubs in the public right-of-way are damaged as a result of work undertaken by or on behalf of grantee, grantee shall pay the metropolitan government within thirty days of submission of a statement by the metropolitan government, the cost of any treatment required to preserve the tree or shrub and/or cost for removal and replacement of the tree or shrub with landscaping of equal value and/or the value of the tree or shrub prior to the damage or removal, as determined by the urban forester or other authorized agent of the metropolitan government. (Ord. 94-1103 § 16, 1994)

6.26.170 Abandonment of right-of-way.

In the event that the metropolitan government shall close or abandon any public street, alley or right-of-way, which contains any portion of grantee's system, any conveyance of land contained in such closed or abandoned public street, alley, highway or right-of-way shall be subject to the rights herein granted. (Ord. 94-1103 § 17, 1994)

6.26.180 Rights of abutting landowners.

In the event that the metropolitan government authorizes abutting landowners to occupy space under the surface of any public street, alley or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to grantee. (Ord. 94-1103 § 18, 1994)

6.26.190 Relocation of the system.

A. New Grades or Lines. If the grades or lines of any street on which grantee's system is placed are changed at any time during the term of the franchise, then the grantee shall, at its own cost and expense and upon the request of the metropolitan government, protect or promptly alter or relocate the system, or any part thereof, so as to conform with such new grades or lines. In the event that the grantee refuses or neglects to so protect, alter, or relocate all or part of the system, the metropolitan government shall have the right to break through, remove, alter or relocate such part of the system, without any liability to the metropolitan government, and the grantee shall pay to the metropolitan government the costs incurred in connection with such breaking through, removal, alteration or relocation.

B. Relocation of Right-of-Way. Wherever a public right-of-way or other public property is being constructed, paved (whether or not such paving is part of a more exten-

sive improvement project), resurfaced, relocated or otherwise altered or improved (including, but not limited to, the installation of sidewalk, curb, gutter, drainage facilities, water mains, or sewer mains, traffic signals or trees), grantee shall, within ninety days of written notice from the director of public works, and at no cost (direct or indirect) to the metropolitan government, remove or relocate any grantee facility located within such public right-of-way or public property or perform such work as it deems necessary for the extension of new facilities. In the event the grantee fails to relocate its property in a manner approved by the metropolitan government within ninety days of the metropolitan government's written notice, absent an extension of time granted by the metropolitan government, the metropolitan government may seek revocation of the franchise agreement pursuant to Section 6.26.310 of this chapter. Failure to obtain the metropolitan government's approval of the location of facilities relocated under this section will be considered a forfeiture under Section 6.26.310 of this chapter. Grantee shall be responsible for any damage it causes to property, including damage to trees and other landscaping, as a result of the relocation or removal of facilities.

C. Time Limit—Liquidated Damages. Failure of grantee to remove or relocate the facility to a location approved by the metropolitan government within ninety days of the metropolitan government's written notice shall entitle the metropolitan government to recover liquidated damages from grantee. The liquidated damages for failure to remove or relocate a facility shall be two hundred fifty dollars per diem.

If grantee believes it will be unable to complete the relocation within ninety days from receipt of notice from the metropolitan government, grantee shall explain the reasons for its inability in detail and the metropolitan government and grantee shall attempt to agree on an alternate schedule, subject, however, to the metropolitan government's right to finally determine the schedule and liquidated damages, as long as its decision is not unreasonable. (Amdt. 1(14) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 19, 1993)

6.26.200 Bonds.

A. Grantee shall obtain and maintain, at its sole cost and expense, and file with the metropolitan clerk, a corporate surety bond with a surety company authorized to do business in the State of Tennessee and found acceptable by the metropolitan attorney, in the amount of five hundred thousand dollars, both to guarantee the timely construction and full activation of grantee's system, and to secure grantee's performance of its obligations and faithful adherence to all requirements of the franchise ordinance codified in this chapter. After the first five years of the initial term, bond requirement amount shall be reduced to two hundred fifty thousand dollars. Grantee shall provide this corporate surety bond at the time of execution of a franchise agreement, as required by Section 6.26.330 of this chapter.

B. The rights reserved to the metropolitan government with respect to the bond are in addition to all other rights of the metropolitan government, whether reserved by the franchise ordinance codified in this chapter or authorized by law; and no action, proceeding or exercise or a right with respect to such bond shall affect any other right the metropolitan government may have.

C. The bond shall contain the following endorsement; it is hereby understood and agreed that this bond may not be canceled by the surety nor any intention not to renew by exercised by the surety until sixty days after receipt by the metropolitan government, by registered mail, of written notice of such intent. (Ord. 94-1103 § 20, 1994)

6.26.210 Insurance requirements.

On or before the effective date of the franchise, grantee shall file with the metropolitan government a certificate of insurance and thereafter maintain in full force and effect at all times for the full term of the franchise, at the expense of grantee, a comprehensive general liability insurance policy, including underground property damage coverage, naming the metropolitan government as additional insured, written by a company authorized to do business in the State of Tennessee, protecting the metropolitan government against liability for loss or bodily injury and property damage occasioned by the installation, removal, maintenance, or operation of the communications system by grantee in the following minimum amounts:

A. One million dollars combined single limit, bodily injury and for real property damage in any one occurrence;

B. One million dollars aggregate.

Grantee shall also file with the metropolitan government a certificate of insurance for a comprehensive automobile liability insurance policy written by a company authorized to do business in the State of Tennessee, for all owned, nonowned, hired and leased vehicles operated by grantee, with limits no less than one million dollars each accident, single limit, bodily injury and property damage combined, or evidence of self-insurance.

Grantee shall also maintain, and by its acceptance of any franchise granted hereunder, and specifically agrees that it will maintain throughout the term of the franchise, workers compensation and employers liability, valid in the state, in the minimum amount of the statutory limit for workers compensation, and five hundred thousand dollars for employers liability.

All liability insurance required pursuant to this section shall be kept in full force and effect by grantee during the existence of the franchise and until after the removal of all poles, wires, cables, underground conduits, manholes and any other conductors and fixtures installed by grantee incident to the maintenance and operation of the communications system as defined in this chapter. All policies shall be endorsed to give the metropolitan government thirty days' written notice of the intent to amend or cancel by either grantee or the insuring company. (Ord. 94-1103 § 21, 1994)

6.26.220 Indemnification.

Grantee shall indemnify, defend and save whole and harmless the metropolitan government and all of its officers, agencies, and employees against and from any and all claims, suits, judgments, actions, losses, costs and expenses, including attorney's fees and costs or expenses incidental to the investigation and defense of claims and lawsuits brought for, on behalf of, or on account of any injuries or damages received or sustained by any person, firm or corporation or to any property, which may be occasioned by, or arising out of or from, the conduct of grantee in connection with the franchise ordinance codified in this chapter, the construction, reconstruction, expansion, removal, maintenance, operation, or repair of grantee's system, the conduct of grantee's business in metropolitan Nashville and Davidson County pursuant to the franchise ordinance codified in this chapter, any occurrence in connection with the franchise ordinance codified in this chapter, any and all claims and lawsuits arising from any breach or default on the part of grantee in the performance of any term, condition, provision, covenant or agreement to be performed by grantee pursuant to the franchise ordinance codified in this chapter, any act or omission of grantee, or any of its agents, contractors, subcontractors, servants, employees or licensees, or any relationship between grantee and its end use customers and retailers whether caused by or attributable solely to grantee and others, or the metropolitan government, and grantee shall pay all judgments, with costs, counsel fees and expenses, which may be obtained against the metropolitan government related to any such claim. The metropolitan government agrees to give grantee prompt and reasonable notice of any claims or lawsuits; and grantee shall have the right to investigate, compromise and defend same to the extent of its own interest. The above indemnification shall not apply to any judgment of liability resulting from the gross negligence or wilful misconduct of the metropolitan government. The terms and provisions contained in this section are intended to be for the benefit of the metropolitan government and grantee, and are not intended to be for the benefit of any third party. The metropolitan government shall have the right to participate or conduct the defense of its interests in any proceeding, and thereby assume risks and liabilities for its own acts or omissions. (Ord. 94-1103 § 22, 1994)

6.26.230 Services to the metropolitan government.

Grantee agrees to provide the metropolitan government with four dark fiber optic fibers within the backbone of grantee's system for use by the metropolitan government for municipal purposes only. Grantee also shall provide coordination and engineering assistance to the metropolitan government for providing such fiber optic accesses as the metropolitan government may require.

In order to ensure coordination of metropolitan government facilities with grantee's network, grantee agrees to:

A. Provide twenty-four hour per day continuous monitoring of grantee's system;

B. Coordinate, design and install network specific requirements of the metropolitan government, including maintenance, at grantee's cost, plus ten percent.

Grantee shall maintain with the metropolitan government a current listing of all buildings, both public and private, in which it provides services. No monthly fee shall be charged to the metropolitan government for this service.

Grantee shall comply with applicable requirements of regulatory agencies, with jurisdiction over ratemaking issues, which promote universal service. (Amdt. 1(15) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 23, 1994)

6.26.240 Compensation to the metropolitan government.

A. General Compensation. For the reason that the public streets, alleys and rights-of-way to be used by grantee in the operation of its system within the boundaries of the metropolitan government are valuable, public properties, acquired and maintained by the metropolitan government at great expense to its taxpayers, and that the grant to grantee of the use of said public streets, alleys and rights-of-way is a valuable property right, without which the grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the grantee agrees to pay to the metropolitan government as general compensation during each year of the franchise ordinance codified in this chapter, an amount equal to five percent of gross revenues for each quarter of a compensation year. Grantee shall forward by check or money order an amount equal to the quarterly payment by the fifteenth day of the calendar month immediately following the close of the calendar

quarter for which the payment is calculated. Any necessary prorations shall be made.

B. Recalculation At End of Compensation Year. At the end of each compensation year, grantee shall recalculate the total general compensation actually due. If additional amounts are due the metropolitan government by grantee, said amounts shall be paid by the fifteenth day of the second month of the compensation year following the compensation year during which such amounts were originally due. If amounts are found to be due the grantee by the metropolitan government, said amounts shall be credited by the fifteenth day of the second month of the compensation year, during which such amount were originally due. Any necessary prorations shall be made. The compensation set forth in this section shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any quarterly payment is made after noon on the date due, grantee shall pay a late payment penalty of the greater of: (1) one hundred dollars or (2) simple interest at ten percent annual percentage rate of the total amount past due. As used in this section, gross revenues shall mean all revenues (exclusive of sales tax) collected by grantee from operation of grantee's system installed pursuant to the franchise ordinance codified in this chapter, and any related services provided by the grantee within metropolitan Nashville and Davidson County, including, but not limited to:

1. All telecommunications service revenues charged on a flat-rate basis;

2. All telecommunications services charged on a usage-sensitive or mileage basis;

3. All revenues from installation service charges;

4. All revenues from connection or disconnection fees;

5. All revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid;

6. All revenues from local services;

7. All revenues from authorized rental of conduit space;

8. All revenues from charges for access to local and long distance networks;

9. All revenues from authorized rentals of any portion of grantee's system, including plant, facilities, or capacity leased to others;

10. All other revenues collected from grantee's business pursued with the metropolitan government, excluding revenues received pursuant to Section 6.26.230(B) and, excluding third party billing arrangements not related to grantee's business;

11. Recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludable from gross revenues; and

12. All revenues received from any subcontractor and/or subsidiary operating telecommunications services under or pursuant to grantee's franchise.

Gross revenues shall not include revenues from long distance operations other than revenues from local access connections.

Payment of money under this section shall not in any way limit or inhibit any of the privileges or rights of the metropolitan government, whether under the franchise ordinance codified in this chapter or otherwise.

Any transactions which have the effect of circumventing payment of required franchise fees and/or evasion of payment of franchise fees by noncollection or nonreporting of gross revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by grantee are prohibited. (Amdt. 1(16), (17), (18), (19), (20), (21) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 24, 1994)

6.26.250 Accounts, records and reports.

A. Grantee shall keep the metropolitan government fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of grantee's system, grantee's accounting methods and procedures in connection therewith, and the recording and reporting by grantee of all revenues and uncollectibles.

B. Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to the franchise ordinance codified in this chapter in accordance with generally accepted accounting principles, subject to approval by the metropolitan government. If required by the FCC, grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The metropolitan government may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 6.26.240 of this chapter. Grantee shall keep its books of account and records in such a way that breakdowns of revenues are available by type of service within the metropolitan government.

Grantee shall file annually with the director of finance and the metropolitan clerk, on a form approved by the metropolitan government, no later than ninety days after the end of the grantee's fiscal year, an audited statement of revenues (for that year) attributable to the operations of the

grantee's system within metropolitan Nashville and Davidson County pursuant to the franchise ordinance codified in this chapter. This statement shall present a detailed breakdown of gross revenues and uncollectible accounts for the year. This statement shall be audited by an independent certified public accountant whose report shall accompany the statement. The metropolitan government may, if it sees fit, have the books and records of grantee examined by a representative of said metropolitan government to ascertain the correctness of the reports agreed to be filed herein.

C. Grantee shall report to the metropolitan government such other information relating to grantee as the metropolitan government may consider useful and shall comply with the metropolitan government's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

D. Grantee shall provide the metropolitan government with access at reasonable times and for reasonable purposes, to examine, audit and review the papers, books, accounts, documents, maps, plans and other records of grantee pertaining to the franchise ordinance codified in this chapter. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

E. The metropolitan government may, at any time, make inquiries pertaining to grantee's operation of its system within metropolitan Nashville and Davidson County. Grantee shall respond to such inquiries on a timely basis.

F. Grantee shall provide the metropolitan government with notices of all petitions, applications, communications and reports submitted by grantee to the FCC, Securities and Exchange Commission and the Tennessee Public Service Commission or their successor agencies, relating to any matters affecting the use of public streets, alleys and public rights-of-way and/or the telecommunications operations authorized pursuant to the franchise ordinance codified in this chapter. Upon written request from the metropolitan government, grantee shall provide the metropolitan government with copies of all such documentation. (Amdt. 1(22), (23) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 25, 1994)

6.26.260 Term of franchise.

A. Term. Upon execution of a franchise agreement between the metropolitan government and grantee, a franchise shall be in full force and effect for a term and period of fifteen years, ending on the anniversary date of the franchise.

B. Renegotiation At Five Years. The metropolitan government and grantee shall have the right to renegotiate in good faith, at the fifth and tenth anniversary dates of the franchise, the amount, nature and terms of compensation to be paid by grantee for use of the public rights-of-way during the term of this franchise. Any adjustment to compensation shall become effective on the next succeeding anniversary date. In order to renegotiate compensation, the metropolitan government, acting through its director of finance, shall give written notice to grantee at least sixty days prior to the fifth and tenth year anniversary dates. Said notice shall contain the franchise's proposed schedule of compensation. The terms of any such compensation shall be reflected in an amendment to this franchise and shall be nondiscriminatory and reasonable. No such amendment may take effect without the approval, by ordinance, of the metropolitan council.

C. Dispute Resolution. If grantee shall in good faith maintain that the amount, terms or nature of any adjustment to compensation proposed by the metropolitan government pursuant to Section 6.26.260(B) is excessive or unreasonable, given the value of the privileges granted under this chapter and grantee's franchise, grantee shall enter into good faith negotiations with the metropolitan government as expeditiously as possible to reach an agreement as to the adjustment to compensation prior to the five-year anniversary date. In the event that an agreement as to adjustment to compensation is not reached prior to such anniversary date, grantee shall have the right to make a demand for arbitration in writing to the director of information systems within thirty days after such anniversary date. In such event, the metropolitan government and grantee shall each appoint an arbitrator and a third arbitrator shall be appointed by the arbitrators so appointed. Each arbitrator shall have at least five years of experience in the field of rights-of-way procurement. Pursuant to the then current rules of the American Arbitration Association, or any successor organization, an arbitration shall be held as expeditiously as possible. (Amdt. 1(24) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 26, 1994)

6.26.270 Extension of term.

If, on the expiration date, grantee shall not be in default under the franchise, and if neither party has notified the other of its intent to terminate the franchise on or before the expiration date, then the terms of this franchise shall be deemed extended on an interim basis until terminated, renewed or renegotiated. Said interim extension period shall not extend beyond a date sixty days after the expiration date, after which date the franchise shall be considered terminated and all rights of the grantee to use the public rights-of-way to provide telecommunications services shall cease. (Ord. 94-1103 § 27, 1994)

6.26.280 Renewal.

At any time during the last year of the franchise, grantee may request the metropolitan government to enter into negotiations toward renewing or extending this franchise. The exercise by grantee of this option shall not bind the metropolitan government as to acceptance of any particular terms or renewal of the rights granted by the franchise. Any proposed renewal, extension or modification of the franchise is subject to the council's approval, modifications or rejection in its sole discretion.

Upon expiration of the fifteenth year of the franchise, the metropolitan government shall have the right, at its election, to:

A. Renew or extend the franchise for an additional period, as agreed by the metropolitan government and grantee;

B. Invite additional franchise applications or proposals; or

C. Terminate the franchise without further action.

The grantee shall provide notice to any party to any contract entered into by it that the metropolitan government shall have the right to exercise these options. (Amdt. 1(25) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 28, 1994)

6.26.290 Assignment or lease of franchise.

Neither the franchise, the assets held by grantee under the franchise ordinance codified in this chapter, nor any rights or privileges of grantee under the franchise ordinance codified in this chapter, grantee's system capacity, or allowance of access to grantee's system, either separately or collectively, shall be sold, resold, assigned, transferred or conveyed by grantee to any other person, firm, corporation, affiliate or entity, without the written consent of the metropolitan government by ordinance of the council, which permission shall not be unreasonably withheld. In the event that the purchaser is the holder of a like franchise, the franchise purchased shall be canceled and merged into the franchise held by the purchaser upon such terms and conditions as may be set out by the council when permission for assignment is granted. Should the grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under the franchise ordinance codified in this chapter, or attempt to do so, in violation of this requirement to obtain prior consent, the metropolitan government may revoke this franchise for default, in which event all rights and interest of the grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective. (Amdt. 1(26) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 29, 1994)

6.26.300 Violations.

If the metropolitan government has reason to believe that grantee is in violation of this chapter, the metropolitan government shall notify grantee in writing of the violation, setting forth the nature of such violation. Within ten days of receipt of such notice, grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty days to cure violations after written notice is received from the metropolitan government.

Upon evidence being received by the metropolitan government that any violation of the franchise ordinance codified in this chapter, any Metropolitan Charter provisions or any ordinances lawfully regulating grantee in the construction and operation of this system is occurring, or has occurred, the metropolitan government shall cause an investigation to be made. If the metropolitan government finds that such a violation exists or has occurred, the grantee shall take appropriate steps to comply with the terms of the franchise ordinance codified in this chapter and any lawful regulation. Should grantee fail to comply, after the above-stated notice and opportunity to cure, then the metropolitan government may take any action authorized by law, including revocation or repeal of the franchise or a suit in court to compel compliance. If, in any such proceeding, default is finally established, grantee shall be required to pay to the metropolitan government the reasonable expenses incurred in the prosecution of such suit and all the metropolitan government's damages and costs (including attorney's fees). (Ord. 94-1103 § 30, 1994)

6.26.310 Revocation and termination.

A. In addition to all other rights and powers retained by the metropolitan government under the franchise ordinance codified in this chapter or otherwise, the metropolitan government reserves the right to revoke and terminate any franchise issued by authority of the ordinance codified in this chapter, and all rights and privileges of grantee hereunder shall cease in the event of material breach, subject to reasonable notice and opportunity to cure, of its terms and conditions. A material breach of grantee shall include, but shall not be limited to, the following:

1. Grantee's violation of any material provision of the franchise ordinance codified in this chapter or any material rule, order or regulation of the metropolitan government made pursuant to the franchise ordinance codified in this chapter;

2. Grantee's failure to properly compensate the metropolitan government as required in the franchise ordinance codified in this chapter;

3. Grantee's attempt to evade any material provision of the franchise ordinance codified in this chapter or to

practice any fraud or deceit upon the metropolitan government or upon grantee's end-user customers or interexchange carriers;

4. Grantee's failure to comply with Section 6.26.060 of this chapter;

5. For failure to file and maintain the bond, security or insurance required under this chapter;

6. Grantee's failure to comply with Section 6.26.290 of this chapter;

7. Grantee's failure to respond to or comply with reports, audits, statements and other information lawfully requested by the metropolitan government;

8. Grantee's failure to operate its system for six months after it has been constructed; or

9. Grantee's material misrepresentation of fact in its application or negotiations during the franchise process; or the conviction of any director, officer, employee or agent of grantee for the offense of bribery or fraud connected with or resulting from the award of the franchise to grantee.

B. The foregoing shall not constitute a material breach if the violation occurs without the fault of grantee or occurs as a result of circumstances beyond its control. Grantee shall not be excused by mere economic hardship, nor misfeasance or malfeasance of its directors, officers or employees. Revocation or termination shall only take place for material cause.

C. If any provision of this chapter shall be preempted by state or federal regulations, or finally adjudged by a court of law invalid or unenforceable and the council further finds that such provision constitutes at that time a consideration material to the continuance of the franchise herein granted, the metropolitan government reserves the right to revoke and terminate any franchise issued under authority of this chapter. (Amdt. 1(27), (28), (29), (30), (31) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 31, 1994)

6.26.320 Service standards.

Grantee shall maintain and operate its communications system and business in an efficient manner and shall provide adequate, efficient and reasonable service to its customers in metropolitan Nashville and Davidson County. Once it commences operation, grantee's system shall provide continuous and uninterrupted service throughout the term of the franchise.

Grantee shall comply with all applicable federal, state and local laws, rules and regulations, including the Tennessee Public Service Commission. (Amdt. 1(32) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 32, 1994)

6.26.330 Preferential or discriminatory practices prohibited.

Pursuant and subject to applicable federal, state and local laws, grantee shall not make or grant any unreasonable preference or advantage to any person, nor subject any person to any unreasonable prejudice or disadvantage in its exercise of the rights and privileges granted by its franchise; provided, however, that nothing in its franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules, consistent with applicable law, to which any customer coming within such classification would be entitled. (Amdt. 1(33) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 33, 1994)

6.26.340 Conflict with other laws.

Where a provision of this chapter or grantee's franchise is in conflict with any state or federal statute or a rule of the Tennessee Public Service Commission or FCC, so that grantee cannot reasonably comply with both the provisions of this chapter or franchise and the statute or rule of the Tennessee Public Service Commission of FCC, then grantee may comply with such rule instead of the conflicting provision of this chapter or the franchise until such time as the metropolitan government obtains a contrary ruling or other relief from an appropriate regulatory agency or court of competent jurisdiction; provided, that the metropolitan government is given written notice of and a statement of the legal grounds for such noncompliance. Grantee shall comply with all remaining provisions of this chapter or franchise. Notice of noncompliance given pursuant to this shall not relieve grantee—upon determination that the noncompliance was unlawful or otherwise improper—from the obligation to pay more damages, redo work at grantee's expense, or otherwise take such steps as may be necessary to restore the metropolitan government to the position it would have been in if grantee had remained in compliance with this chapter and its franchise. (Amdt. 1(34) to Ord. 94-1103, 7/19/94; Ord. 94-1103 § 34, 1994)

6.26.350 Compliance with applicable laws and ordinances.

Grantee shall, at all times during the term of its franchise, be subject to the provisions of the present Charter of the Metropolitan Government, the present ordinances, resolutions, rules, regulations and laws of the metropolitan government and the State of Tennessee, and to the provisions of any further charter, ordinance, resolution, rule, regulation or law of the metropolitan government or of the State of Tennessee, so far as they may be applicable. (Ord. 94-1103 § 35, 1994)

6.26.360 Tennessee law governs.

In any controversy or dispute under this chapter, the law of the State of Tennessee shall apply to the extent such law has not been superseded or preempted. (Ord. 94-1103 § 36, 1994)

6.26.370 Metropolitan government taking part in litigation.

The metropolitan government shall have the right to take part in, by intervention or otherwise at its option, in any suit, action, or proceeding instituted by or against grantee in which any judgment, decree, or order can be rendered affecting the rights, powers or duties of grantee to do or not to do anything which, by its franchise or this chapter, it is obligated or may be required to do or not to do or affecting, such as by foreclosure or lien, grantee's title to any facility. Grantee shall not object to the metropolitan government's exercise of such right. (Ord. 94-1103 § 37, 1994)

6.26.380 Office location.

The grantee shall maintain an office in metropolitan Nashville and Davidson County. Grantee shall always keep and maintain city specific books, records, contracts, accounts, documents, and papers for its operation within metropolitan Nashville and Davidson County. All maps, plats, records and inventories and books of the grantee, insofar as they show values and location of existing property shall be preserved for use, if necessary, in connection with any future valuation of the property of the grantee. (Ord. 94-1103 § 38, 1994)

6.26.390 Severability.

In any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of the franchise ordinance codified in this chapter is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of the franchise ordinance codified in this chapter shall not be affected thereby, but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of the franchise ordinance codified in this chapter shall be valid and enforceable to the fullest extent permitted by law. (Ord. 94-1103 § 39, 1994)

Chapter 6.28

HOTELS AND ROOMINGHOUSES

Sections:

6.28.010 **Register requirements.**
6.28.020 **Registration under fictitious name prohibited.**

6.28.010 Register requirements.

A. Every person operating a hotel or roominghouse, engaged in the business of lodging transients, shall keep a book or register in which shall be listed the name and address of each of its guests or lodgers, together with the date of arrival and the date of departure.

B. Such book or register shall be kept so as to show arrivals and departures of guests for a period of at least six months.

C. Every person operating a hotel or roominghouse and the employees thereof shall exhibit such book or register to any member of the police department upon the written request of the chief of police or the chief of the detective department. (Prior code § 29-1-25)

6.28.020 Registration under fictitious name prohibited.

It is unlawful for any person to write or cause to be written or knowingly permit to be written in any register in any hotel, lodginghouse, roominghouse or other place whatsoever where transients are accommodated in the area of the metropolitan government, any other or different name or designation than the true name of the person so registered therein, or the name by which such person is generally known. (Prior code § 29-1-26)

Chapter 6.32

HUCKSTERS AND PEDDLERS

Sections:

6.32.010 **Nashville Convention Center—Area regulations.**
6.32.020 **Municipal auditorium—Area regulations.**
6.32.030 **Municipal auditorium—Disclosure of admission charge.**
6.32.040 **Nashville Arena—Area regulations.**

6.32.010 Nashville Convention Center—Area regulations.

A. The sale or offering for sale of any goods or personal property is prohibited, within areas specified in this subsection, on any date whereon an event or show has been duly scheduled in the Nashville Convention Center. The prohibition includes all times necessary for preparation and removal of any material before and after any such event or show. Such sale or offering for sale of goods or personal property is prohibited upon the streets and sidewalks in the area of the metropolitan government surrounding the Nashville Convention Center, and more particularly described as follows:

Beginning at the northwest corner of Broadway and Seventh Avenue North and proceeding in a northeasterly direction along the northerly margin and sidewalk of Broadway adjacent to the Convention Center of Broadway to the northwest corner of Broadway and Fifth Avenue North, thence proceeding in a northwesterly direction along the westerly margin and sidewalk of Fifth Avenue adjacent to the Convention Center to the western side of the intersection of Fifth Avenue North and Commerce Street, thence proceeding in a southwesterly direction along the northern and southern margins and sidewalks of Commerce Street to the easterly side of the intersection of Commerce Street and Fifth Avenue North.

Provided, however, that the provisions of this section shall not apply to individuals soliciting for a bona fide charitable or religious purpose when such individual or organization shall have been approved and granted either a charitable solicitations permit or a religious registration by the metropolitan charitable solicitations board, or when such individual or organization shall have been exempted from any such requirements. Nor shall the provisions of this section apply to any individuals while in the process of exercising any lawful right of speech or assembly protected by the Constitution of the United States and the state of Tennessee.

B. The provisions of this section shall not be construed to limit, abridge or otherwise abrogate any other requirement established by any other ordinance concerning licenses or permits which may be required to be obtained before any such sale or offering for sale of any goods referenced in subsection A of this section which may take place. Should the requirements of this section be more stringent than the requirements of any other ordinance which may relate to the sale or offering for sale of any goods referenced in subsection A of this section and within the area in which such sale or offering for sale is proscribed, then the provisions of this section shall prevail. (Ord. 95-1329 § 5 (part), 1995; Ord. 89-661 §§ 1—3, 1989)

6.32.020 Municipal auditorium—Area regulations.

A. The sale or offering for sale of personal property, including but not limited to food, candy, confections, programs, books, pictures, records, tee shirts, lights and other novelties, or any and all other articles of personal property whatsoever by any person, is prohibited between the hours of eight a.m. and eleven p.m. on any date whereon a performance or event has been duly scheduled in the municipal auditorium through a lease agreement executed by both the lessee and the municipal auditorium building manager, under authority granted to the manager by the metropolitan auditorium commission, and such executed lease has been filed in the office of the metropolitan clerk. Such sale or offering for sale is prohibited upon the streets and sidewalks in an area of the metropolitan government surrounding the municipal auditorium, and more particularly described as follows:

Beginning at the southeast corner of the metropolitan courthouse located at the intersection of Third Avenue and Deadrick Street, proceeding in a northwesterly direction along this avenue to the intersection of Third Avenue and Jo Johnston Street, then proceeding in a southwesterly direction along Jo Johnston Street to the intersection of Jo Johnston Street and James Robertson Parkway, thence proceeding in a northwesterly, westerly and southwesterly and southerly direction along the route of James Robertson Parkway to the intersection of James Robertson Parkway and Union Street, thence proceeding along Union Street in a northeasterly direction to the intersection of Union Street and Fourth Avenue, thence proceeding in a northwesterly direction along Fourth Avenue to the intersection of Deadrick Street and Fourth Avenue, thence proceeding in a northeasterly direction along Deadrick Street to the intersection of Deadrick Street and Third Avenue.

Provided, however, that the provisions of this section shall not apply to individuals or organizations soliciting for a bona fide charitable or religious purpose when such individual or organization shall have been approved and granted either a charitable solicitations permit or a religious registration by the metropolitan charitable solicitations board, or when such individual or organization shall have been exempted from any such requirements.

B. The provisions of this section shall not be construed to limit, abridge or otherwise abrogate any other requirement established by any other ordinance concerning licenses or permits which may be required to be obtained before any such sale or offering for sale of any of the articles enumerated in subsection A of this section may take place. Should the requirements of this section be more stringent than the requirements of any other ordinance

which may relate to the sale or offering for sale of the goods enumerated in subsection A of this section, and within the area in which such sale or offering for sale is proscribed, then the provision of this section shall prevail.

C. Any person violating any of the provision of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than fifty dollars. Each sale or offering for sale which occurs in violation of this section shall be deemed a separate offense. (Ord. 96-338 § 1, 1996; prior code § 23-1-1)

6.32.030 Municipal auditorium—Disclosure of admission charge.

Any person renting the municipal auditorium for the purposes of retail sales shall be required to disclose any admission charge to the municipal auditorium if any fee or charge is imposed, and the amount of the fees or charges shall be disclosed in all handbills, newspapers, radio and television advertising and shall be conspicuously posted at the municipal auditorium. (Prior code § 23-1-2)

6.32.040 Nashville Arena—Area regulations.

A. 1. The sale or offering for sale of any food, goods or personal property is prohibited, within the area specified by this subsection, on any date whereon an event has been duly scheduled in the Nashville Arena. The prohibition includes all times used for preparation and removal of any material before and after the event and all times during the event. Such sale or offering for sale of food, goods or personal property is prohibited upon the streets and sidewalks in the area of the metropolitan government surrounding the Nashville Arena, and more particularly described as follows:

> Beginning at the northeast corner of Broadway and 5th Avenue South and proceeding south along the east side of 5th Avenue South to the southeast corner of Demonbreun Street and 5th Avenue South, thence proceeding west along the southern side of Demonbreun Street to the southwest corner of Demonbreun Street and 6th Avenue South, thence proceeding north along the western side of 6th Avenue South to the northwest corner of 6th Avenue South and Broadway, thence proceeding east along the northern side of Broadway to the northeast corner of Broadway and 5th Avenue South.

2. This subsection shall not apply to individuals soliciting for a bona fide charitable or religious purpose when such individual or organization shall have been approved and granted either a charitable solicitations permit or a religious registration by the metropolitan charitable solicitations board, or when such individual or organization shall have been exempted from any such requirements. Nor shall the provisions of this section apply to any individuals while in the process of exercising any lawful right of speech or assembly protected by the Constitution of the United States and the state of Tennessee.

B. The provisions of this section shall not be construed to limit, abridge or otherwise abrogate any other requirement established by any other ordinance concerning licenses or permits which may be required to be obtained before any such sale or offering for sale of any goods referenced in subsection A of this section which may take place. Should the requirements of this section be more stringent than the requirements of any other ordinance which may relate to the sale or offering for sale of any goods referenced in subsection A of this section and within the area in which such sale or offering for sale is proscribed, then the provisions of this section shall prevail.

C. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than twenty-five dollars nor more than fifty dollars. Each sale or offering for sale which occurs in violation of this section shall be deemed a separate offense. (Ord. 96-569 § 1, 1996)

Chapter 6.40

MOTION PICTURE PROJECTIONISTS

Sections:

6.40.010	**Board of electrical examiners—Duties—Projectionist appointed member.**
6.40.020	**Examination.**
6.40.030	**Licensed operator required when—Minimum age.**
6.40.040	**Application form and fee—License issuance conditions—Reexamination.**
6.40.050	**License renewal, suspension and revocation.**

6.40.010 Board of electrical examiners—Duties—Projectionist appointed member.

A. The board of electrical examiners shall examine and pass upon the qualifications of all applicants for a license to operate commercial motion picture machines and equipment.

B. To further this objective, a duly licensed motion picture projectionist with a minimum of ten years' experience as an operator of motion picture machines and

equipment shall be appointed to the board of electrical examiners by the mayor and shall hold office at the pleasure of the mayor. Such operator shall pass only on the proficiency of applicants for a license as a motion picture operator, and shall not have a vote in other affairs of the board of electrical examiners. (Prior code § 14-1-101)

6.40.020 Examination.

The board of electrical examiners shall establish rules and regulations under which an applicant for an operator's license shall be examined, and shall set a time and place for such examination to be given. The examination shall be of such nature that the qualifications of the applicant will be clearly determined. The director of the department of codes administration or his duly authorized representative shall be the custodian of all records of examinations given and licenses issued. Such records shall be kept on file in the office of the department of codes administration and shall be a matter of public record. (Prior code § 14-1-104)

6.40.030 Licensed operator required when—Minimum age.

A. All motion picture machines and equipment other than eight-millimeter and sixteen-millimeter projectors operating on one hundred ten to one hundred twenty-five volts, used for the purpose of commercial showing or display to the general public, shall be under the direct supervision and management of a licensed operator.

B. No person under the age of eighteen shall be eligible for an examination or issued a license as an operator. (Prior code § 14-1-102)

6.40.040 Application form and fee—License issuance conditions—Reexamination.

A. All applications for an examination and license under this chapter shall be in writing on a form provided by the director of the department of codes administration, and shall be accompanied by a fee of twenty-five dollars.

B. A license shall be issued only to such applicants who successfully complete the qualifications examination and who have demonstrated acceptable proficiency in the operation of commercial motion picture machines and equipment.

C. Upon failure of an applicant to pass the required examinations, such applicant shall not be eligible to apply for a reexamination for a period of six months. (Prior code § 14-1-103)

6.40.050 License renewal, suspension and revocation.

All licenses under this chapter shall be renewed annually on the first day of January following the date of issuance, and a fee of ten dollars shall be charged for all renewals, provided the license has not expired more than twelve months prior to the application for renewal. The board of electrical examiners shall have the authority to revoke, suspend or refuse to renew a license for cause. In the event a licensee has been notified that his license will be revoked, suspended or renewal refused, the licensee shall on his informal application, be granted a hearing before the board of electrical examiners to show cause why such action by the board should not be taken. (Prior code § 14-1-105)

Chapter 6.44

MOVING COMPANIES

Sections:

6.44.010 Reporting requirements.

6.44.010 Reporting requirements.

A. All persons owning or operating any moving van, furniture car or any other vehicle, who shall haul or move or cause to be hauled or moved any article of household goods, furniture, pianos or personal effects of any resident of the area of the metropolitan government changing the place of his residence, or moving such articles or personal property to a place for storage or to a common carrier for transportation, shall make a report thereof to the chief of police upon report blanks which shall be furnished by the chief of police. Such reports shall contain generally the character of the property so moved, the full name of the owner or person in possession of or having the custody thereof, the address from which and to which such hauling or moving was done, the date thereof and the name of the owner and person in charge of such vehicle. Such report shall be filed within ten days after completion of such hauling or moving, where such property is delivered to a common carrier. The name and address of the consignee shall also be given in such report.

B. It shall be the duty of the chief of police to furnish the blanks necessary for making such reports, and to have the information given on such reports transcribed upon filing cards, which cards shall be kept in alphabetical order in a card filing system. Such records shall be open to public inspection.

C. It is unlawful for any person procuring the removal of any of the property herein described to give to

the owner or operator of any vehicle employed to haul such property a fictitious name or to refuse to give the correct name of the owner or party in possession of such property or to wilfully deceive him as to same. (Prior code § 29-1-42)

Chapter 6.48

PAWNBROKERS AND SECONDHAND DEALERS

Sections:

6.48.010 Register.
6.48.020 Requirements before resale of article.
6.48.030 Daily reports.

6.48.010 Register.

A. It shall be the duty of all persons dealing in the purchase, sale or exchange of secondhand or antique jewelry, watches, diamonds or other precious stones, cutlery, old gold, silver, platinum or other precious metals, or any other secondhand manufactured articles, composed wholly or in part of gold, silver, platinum or other precious metals, to keep a book in which every article received by them in the course of their business shall be registered, and in which shall be given as minute a description of every article as is possible, including the maker's name and number of every article so received by them. The name, age, sex, color, residence, driver's license number and general description of each and every individual selling or exchanging such articles shall be taken and entered in the register.

B. The register shall at all times be kept at the place of business of every person engaging in the business mentioned in subsection A of this section. Members of the police department shall be allowed free access to the register, and the person shall give to such officers all information in his possession concerning such articles and all persons selling or exchanging the same. (Prior code § 31-1-1 (a))

6.48.020 Requirements before resale of article.

All persons engaging in business as described in Section 6.48.010 shall retain any article received in the same state or condition in which it was received and shall not commingle it with other articles separately received, and shall make it available for examination by members of the police department, for a period of seven days before a resale or exchange, unless written permission is obtained from the chief of police. (Prior code § 31-1-1 (b))

6.48.030 Daily reports.

A. All persons engaging in business as described in Section 6.48.010 shall furnish to the chief of police daily reports at his office, showing fully the name, age, sex, color, residence, driver's license number and general description of each person who shall have sold or exchanged any article during the preceding day, together with a full description of the articles sold or exchanged by such person, including the number of each article bearing a number, and the day and hour of the transaction.

B. Every person engaging in such business shall keep duplicates of such reports in a well-bound book or register, which book or register shall at all times be subject to the inspection of members of the police department. Any person intending to engage in business as described in Section 6.48.010 who will not operate that business at an established and permanent location shall give the chief of police at least seventy-two hours' prior notice of the location and date and hours of the operation of such business. (Prior code § 31-1-1 (c))

Chapter 6.52

PLUMBERS, AND PLUMBING AND SEPTIC TANK CONTRACTORS

Sections:

Article I. Plumbers
6.52.010 Classifications—Established.
6.52.020 Classifications—Defined.
6.52.030 Examination, licensing and registration required.
6.52.040 Application for examination and licensing.
6.52.050 Examination—Notice.
6.52.060 Examination—Conducting authority—Type.
6.52.070 Examination—Failure to appear.
6.52.080 Reexamination.
6.52.090 License—Issuance requirements.
6.52.100 Fees—Examination, licensing and renewal.
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Article II. Plumbing Contractors
6.52.130 Metropolitan plumbing contractor defined.

6.52.140 Registration and bonding required.
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6.52.160 Employment requirements.
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6.52.170 Work stoppage order.
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Article III. Septic Tank and Overflow Contractors
6.52.190 Septic tank and overflow contractor defined.
6.52.200 Registration required.
6.52.210 Registration—Fees and expiration.
6.52.220 Bond required.
6.52.230 Examination required—Fee.

Article I. Plumbers

6.52.010 Classifications—Established.

For the purposes of this chapter and Chapters 2.92 and 16.12, every person engaged in the business of plumbing or in the performance of any plumbing work, including the construction, renovation, installation, alteration, extension, removal, reparation, maintenance, or servicing, or any plumbing installation for which a permit is required, within the metropolitan government area, shall be licensed by the board of plumbing examiners and appeals in one of the following classifications:

1. Metropolitan master plumber;
2. Metropolitan journeyman plumber;
3. Metropolitan apprentice plumber.

Nothing in this chapter shall apply to plumbing work performed by persons at or in their own residences. (Ord. BL2004-178 § 3, 2004)

6.52.020 Classifications—Defined.

For the purposes of this chapter and Chapters 2.92 and 16.12, the classifications of plumbers shall be defined as follows:

"Metropolitan master plumber" means an individual who has successfully completed the required master plumber's examination and holds a current and valid metropolitan master plumber's license duly issued by the metropolitan board of plumbing examiners and appeals.

"Metropolitan journeyman plumber" means an individual who has successfully completed the required journeyman plumber's examination and holds a current and valid journeyman plumber's license duly issued by the board of plumbing examiners and appeals; one who is regularly employed as a journeyman and works under the direction and supervision of a metropolitan master plumber.

"Metropolitan apprentice plumber" means an individual who holds a current and valid metropolitan apprentice plumber's license duly issued by the board of plumbing examiners and appeals; one who is regularly employed as an apprentice by a registered and bonded metropolitan plumbing contractor and who works at the trade of plumbing under the direct supervision and in the immediate presence of a metropolitan master or journeyman plumber; and one who is enrolled in an apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training in accordance with the requirements of 29 C.F.R. § 29, or any nationally accredited apprenticeship program, and consists of, at a minimum, eight thousand hours of documented practical experience combined with a minimum of six hundred hours of classroom and/or shop instruction in the plumbing trade. (Ord. BL2004-178 §§ 1 (part), 4, 2004; prior code § 33-1-61)

6.52.030 Examination, licensing and registration required.

It is unlawful for any person to engage in the business of plumbing, to do or perform any plumbing work requiring a plumbing permit including the construction, renovation, installation, alteration, extension, removal, reparation, maintenance, or servicing, or any plumbing installation, as a master plumber, journeyman or apprentice plumber, without first having been examined, licensed and registered as such by the board of plumbing examiners and appeals. (Ord. BL2004-178 §§ 2 (part), 5, 2004)

6.52.040 Application for examination and licensing.

A. It shall be the duty of every person engaged in or desiring to engage in the business of plumbing, to do or perform any plumbing work or to make any plumbing installation as a master plumber, journeyman or apprentice plumber to make application to the board of plumbing examiners and appeals for an examination and issuance of a license. Application for an examination and license shall be made on forms provided by the director of codes administration and shall be accompanied by the required examination fee.

B. In addition to the requirements in subsection A of this section, each applicant must furnish evidence that he has at least three years' experience in the next lower classification. A degree in civil or mechanical engineering may be accepted in lieu of the experience requirement. (Ord. BL2004-178 §§ 1 (part), 2 (part), 2004; Ord. 94-1226 § 7, 1994; prior code § 33-1-63)

6.52.050 Examination—Notice.

Each applicant for examination and licensing as a master plumber, journeyman or apprentice plumber shall be notified, in writing, by the secretary of the board of plumbing examiners and appeals as to the time and place of such examinations, not less than seven days prior to the date scheduled for such examination. (Ord. BL2004-178 § 2 (part), 2004; prior code § 33-1-64)

6.52.060 Examination—Conducting authority—Type.

A. An examination of each applicant for a master plumber's journeyman or apprentice plumber's license shall be conducted by the board of plumbing examiners and appeals at a time and place determined by such board. The examination may be written or oral or a combination of both, at the discretion of the board, and shall, in each instance, be of such nature as to satisfy the board as to the applicant's proficiency in the art of plumbing and plumbing installations and his knowledge of the provisions and material requirements of this chapter, Chapters 2.92 and 16.12, and any subsequent amendments made thereto, as such are related to the applicant's request for licensing; except, that no written examination shall be required of any applicant for a metropolitan apprentice plumber's license.

B. Notwithstanding any other provision to the contrary, any person who is unable to read and write shall be given an oral examination for master plumber, journeyman, or apprentice plumber's license. (Ord. BL2004-178 §§ 1 (part), 2 (part), 2004; prior code § 33-1-65)

6.52.070 Examination—Failure to appear.

The failure of an applicant to appear before the board of plumbing examiners and appeals for examination, at the time and place scheduled for examination, shall not be construed as denying any applicant the right to request a rescheduling of such examination at a later date; except, that no application for examination and licensing shall be held pending by the board, except for just cause, for more than ninety days following receipt of such application. In the event an applicant, after due notice, shall fail to appear before the board for examination, during such ninety-day period, as set forth in this section, the application shall be rejected, the applicant shall be notified of the action taken by the board and the examination fee shall be forfeited. (Ord. BL2004-178 § 2 (part), 2004; prior code § 33-1-66)

6.52.080 Reexamination.

Any applicant for examination and licensing as a master plumber or journeyman plumber who shall fail to pass the examination as required by the board of plumbing examiners and appeals may not apply for reexamination within thirty days following the date of such examination. (Ord. BL2004-178 § 2 (part), 2004; Ord. 89-828 § 3, 1989; prior code § 33-1-67)

6.52.090 License—Issuance requirements.

The board of plumbing examiners and appeals shall issue a license in each of the following classifications when the applicant has fulfilled the following requirements:

A. A metropolitan master plumber's license shall be issued to every applicant who makes proper application for such license, successfully completes the required master plumber's examination and pays the required master plumber's licensing fee.

B. A metropolitan journeyman plumber's license shall be issued to every applicant who makes proper application for such license, successfully completes the required journeyman plumber's examination, pays the required journeyman plumber's licensing fee and submits satisfactory evidence to the board that he is or will be regularly employed as a journeyman plumber by a duly registered and bonded metropolitan plumbing contractor and works under the direction and supervision of a licensed master plumber.

C. A metropolitan apprentice plumber's license shall be issued to every applicant who pays the required apprentice plumber's licensing fee.

D. Notwithstanding any other provision of this article to the contrary, any master plumber, journeyman plumber, or apprentice plumber who possesses a current and valid license issued in accordance with the provisions of Article I of Chapter 6.52 in effect at the time of the enactment of the ordinance requiring the licensing of plumbers, shall retain and be entitled to all of the rights and privileges of a licensed master plumber, licensed journeyman plumber, or licensed apprentice plumber, and shall be entitled to renew such license. (Ord. BL2004-178 §§ 1 (part), 2 (part), 6, 2004; Ord. 89-828 § 4, 1989; prior code § 33-1-68)

6.52.100 Fees—Examination, licensing and renewal.

A. The fees for examination and licensing of a master plumber, journeyman and apprentice plumber shall be as follows:

Classification	Examination Fee	Original License	Renewal License
Master plumber	$50.00	$100.00	$100.00
Journeyman plumber	50.00	25.00	25.00
Apprentice plumber	—	5.00	5.00

B. Renewal licenses for each classification shall be issued free of charge to any license holder over sixty-five years of age. (Ord. BL2004-178 § 2 (part), 2004; Ord. 94-1226 § 9, 1994; prior code § 33-1-69)

6.52.110 License—Expiration and renewal—Penalty.

A. Each license issued by the board of plumbing examiners and appeals shall expire on the last day of December following issuance and shall become invalid unless renewed. Such license shall be renewed annually and recorded in the office of the director of the department of codes administration, on or before the first day of January of each year. Such records shall be open to public inspection during the normal working hours of the department.

B. There shall be in addition to the renewal fee set out in Section 6.52.100 a penalty of ten dollars per month for master plumbers or septic tank and overflow installers and five dollars per month for journeyman plumbers for each month in arrears past the expiration date of the license. (Ord. BL2004-178 § 1 (part), 2004; Ord. 94-1226 § 8, 1994; prior code § 33-1-70)

6.52.120 License—Revocation and suspension—Penalties—Inspections.

A. The board of plumbing examiners and appeals shall revoke or suspend a license issued to any master plumber, journeyman, or apprentice plumber and may impose penalties including but not limited to the issuance of stop work orders, fines, and suspension of work privileges upon positive proof that such person or persons:

1. Knowingly violated the provisions of this chapter, Chapters 2.92 and 16.12, or the rules and regulations of the board;
2. Practiced fraud or deception in making application for or obtaining such license;
3. Is incompetent to perform a service to the public as a licensed plumber;
4. Permitted his license to be used, directly or indirectly, by another to obtain or perform plumbing work or services;
5. Is guilty of such other unprofessional or dishonorable conduct of such nature as to deceive or defraud the public;
6. Permitting himself or his company to represent itself as in the business or art of plumbing unless it employs a master plumber;
7. Knowingly took out a permit for work to be done by persons without a license issued by the board of plumbing examiners and appeals to engage in plumbing work, including the construction, renovation, installation, alteration, extension, removal, reparation, maintenance, or servicing of any plumbing installation for which a permit is required, as a master plumber, journeyman or apprentice plumber.

B. No action of the board to suspend or revoke a license shall become final until the alleged offender has been given an opportunity to appear before the board to show cause as to why such action should not be taken.

C. Notice, in writing, of the proposed action of the board to revoke or suspend a license shall be given to the holder of such license, stating the specific charges upon which such action is based. The notice shall stipulate that a hearing will be scheduled at a time and place set by the board for the aggrieved party to show cause why such action should not be made final. Such hearing shall not be held less than forty-eight hours following notice to the aggrieved party. Failure to appear before the board to answer the specific charges set forth in the notice shall be deemed just cause for final revocation or suspension of a license.

D. In the event a license is revoked by the board, an application for reinstatement of such license shall not be accepted by the board within twelve months after the date of such revocation.

E. The department of codes administration shall have the authority to enforce the provisions of this chapter through the use of initial work-site inspections, scheduled work-site inspections, and unannounced work-place inspections. (Ord. BL2004-178 §§ 1 (part), 2 (part), 7, 2004; prior code § 33-1-71)

Article II. Plumbing Contractors

6.52.130 Metropolitan plumbing contractor defined.

For the purposes of this chapter and Chapters 2.92 and 16.12, a "metropolitan plumbing contractor" means and shall be defined as one of the following:

A. An individual holding a current and valid metropolitan master plumber's certificate duly issued by the board of plumbing examiners and appeals; who holds a current and valid contractor's license issued by the Tennessee State Board for Licensing Contractors, when required; who has been duly registered as a metropolitan plumbing contractor by the department of codes administration and has secured the required contractor's privilege license from the proper licensing authority of the metropolitan government;

B. A person, firm, association or corporation established to do business as a metropolitan plumbing contractor, employing the full-time services of an individual holding a current and valid master plumber's certificate duly issued by the board of plumbing examiners and appeals;

who holds a current and valid contractor's license issued by the Tennessee State Board for Licensing Contractors, when required; who has been duly registered as a metropolitan plumbing contractor by the department of codes administration and has secured the required contractor's privilege license from the proper licensing authority of the metropolitan government. (Prior code § 33-1-72)

6.52.140 Registration and bonding required.

A. It shall be the duty of every person desiring to engage in the business of plumbing as a metropolitan plumbing contractor to register and post bond, as required, with the department of codes administration.

B. It shall be the responsibility of the plumbing contractor to furnish to the department of codes administration a permit bond in the amount of forty thousand dollars conditioned to conform to the requirements of this chapter and all applicable laws, ordinances, rules, and regulations of the metropolitan government relating to work which is performed by the principal pursuant to a permit issued under this bond, or for work performed by the principal for which a permit should have been obtained prior to the commencement of such activity; and to indemnify the metropolitan government and property owners against any and all loss suffered by them by reason of the failure of such contractor to comply with such laws, ordinances, rules and regulations. Such bond shall be continuous and may not be canceled without at least ten days' prior notice, in writing, to the director of codes administration. The liability of the surety shall continue to attach to work performed pursuant to any permit issued prior to the termination date of the bond even if the noncomplying act should occur after the termination date of the bond. The liability of the surety for any and all claims, suits or actions under this bond shall not exceed the bond penalty of forty thousand dollars. Regardless of the number of years this bond may remain in force, the liability of the surety shall not be cumulative and the aggregate liability of the surety for any and all claims, suits or actions under this bond shall not exceed forty thousand dollars. The bond shall be issued by a U.S. Treasury-listed corporate surety or a Tennessee domestic insurance company on forms provided by the department of codes administration.

C. It shall be the responsibility of the plumbing contractor to furnish to the department of codes administration a certificate of general liability insurance issued by a Tennessee-licensed company which provides a minimum of three hundred thousand dollars per occurrence with combined single limits for bodily injury and property damage coverage. The certification of insurance must be submitted prior to renewal of the metropolitan contractor's certificate holder annual renewal. The insurance may not be canceled without at least thirty days' prior notice, in writing, to the director of codes administration. (Ord. 94-1226 § 2, 1994; prior code § 33-1-73)

6.52.150 Registration and bonding conditions.

A. No person engaged in or desiring to engage in the business of plumbing as a metropolitan plumbing contractor shall be registered or bonded as such by the department of codes administration unless such person holds a current and valid master plumber's certificate duly issued by the board of plumbing examiners and appeals.

B. No person, firm, association or corporation, other than an individual holding a current and valid master plumber's certificate, as set forth in subsection A of this section, engaged in or desiring to engage in the business of plumbing as a metropolitan plumbing contractor, shall be registered or bonded as such by the department of codes administration unless such person, firm, association or corporation employs the full-time services of an individual holding a current and valid master plumber's certificate duly issued by the board of plumbing examiners and appeals. (Prior code § 33-1-74)

6.52.160 Employment requirements.

A. In the event a metropolitan plumbing contractor, as defined in subsection B of Section 6.52.130, should for any reason dispense with or otherwise fail to retain the full-time services of a certified metropolitan master plumber, then such metropolitan plumbing contractor shall no longer be eligible to obtain plumbing permits until such time as such plumbing contractor shall employ the full-time services of a certified metropolitan master plumber to supervise its work.

B. In all such instances, it shall be the duty of such metropolitan contractor to immediately notify the director of codes administration, in writing, of any change in the status or relationship of any certified master plumber employed.

C. It shall be the duty also of each metropolitan master plumber employed by a metropolitan plumbing contractor to immediately notify the director of codes administration, in writing, of any change in employment or in his relationship with a metropolitan plumbing contractor. (Prior code § 33-1-75)

6.52.165 Vehicle requirements.

A. All vehicles utilized by a metropolitan plumbing contractor and/or the employees thereof shall have conspicuously painted on the sides of said vehicles in a contrasting color the following information:

1. The full name of the firm to which the vehicle belongs, in lettering of at least three inches;

2. The registration number of the metropolitan plumbing contractor, in lettering of at least two inches;

3. The wording "Nashville, Tennessee" in lettering of at least two inches.

B. In the event vehicles are leased by a metropolitan plumbing contractor, such leased vehicles, in lieu of the painting thereon of the information required by the above, may be equipped with securely attached temporary signs placed on both sides thereof which comply with the requirements above. (Ord. 92-208 § 1, 1992)

6.52.170 Work stoppage order.

A. In the event a metropolitan plumbing contractor, as defined in subsection B of Section 6.52.130, shall cease to employ the services of a metropolitan master plumber, the director of codes administration shall notify such plumbing contractor that he shall no longer be entitled to secure permits and that any work authorized and not completed under any permit issued to such contractor shall be stopped within forty-eight hours after notice, subject to an appeal by such contractor to the board of plumbing examiners and appeals within the forty-eight-hour period.

B. Such notice shall be in writing and shall be delivered to such plumbing contractor by registered mail or served personally on such contractor. (Prior code § 33-1-76)

6.52.180 Appeal from work stoppage order.

Upon written notice of an appeal to the board of plumbing examiners and appeals, involving a work stoppage under the circumstances as set forth in Section 6.52.170, the board shall meet in special session and shall take such action as may be deemed necessary to assure that the intent and purposes of this chapter and Chapters 2.92 and 16.12 are complied with. In each such instance, the action of the board shall be final, subject to such relief as the aggrieved party may have at law or in equity. (Prior code § 33-1-77)

Article III. Septic Tank and Overflow Contractors

6.52.190 Septic tank and overflow contractor defined.

A. For the purpose of this article, a "septic tank and overflow contractor" means and shall be defined as any person who sells, installs, repairs and services septic tank and overflow systems or any other in-ground sewage disposal system approved by the metropolitan health department.

B. For the purpose of this chapter and Chapters 2.92 and 16.12, a "septic tank and overflow contractor" means and shall be defined as any person, firm or corporation who engages in the business of contracting for the sale, installation, repair and service of a private sewage disposal system as defined in subsection A of this section. (Prior code § 33-1-78)

6.52.200 Registration required.

It shall be the duty of every person who shall make contracts for the installation, repair, addition or alteration of any private sewage disposal system, for which a permit is required, to register with the director of codes administration, on forms provided by the director of codes administration, providing the business address of the person, the effective date of the conformance bond, the expiration dates of all required privilege licenses and signatures of all persons authorized to make application for permits for such person. (Prior code § 33-1-79)

6.52.210 Registration—Fees and expiration.

Any person registering with the department of codes administration as a septic tank and overflow contractor shall pay a fee of seventy-five dollars each year thereafter. Such registration shall expire on the last day of December following issuance. (Prior code § 33-1-80)

6.52.220 Bond required.

A. It shall be the responsibility of the septic tank and overflow contractor to furnish to the department of codes administration a permit bond in the amount of forty thousand dollars, conditioned to conform to the requirements of this chapter and all applicable laws, ordinances, rules, and regulations of the metropolitan government relating to work which is performed by the principal pursuant to a permit issued under this bond, or for work performed by the principal for which a permit should have been obtained prior to the commencement of such activity; and to indemnify the metropolitan government and property owners against any and all loss suffered by them by reason of the failure of such contractor to comply with such laws, ordinances, rules and regulations. Such bond shall be continuous and may not be canceled without at least ten days' prior notice, in writing, to the director of codes administration. The liability of the surety shall continue to attach to work performed pursuant to any permit issued prior to the termination date of the bond even if the noncomplying act should occur after the termination date of the bond. The liability of the surety for any and all claims, suits or actions under this bond shall not exceed the bond penalty of forty thousand dollars. Regardless of the number of years this bond may remain in force, the liability of the surety shall not be cumulative and the aggregate liability of the surety for any and all claims, suits or actions under this bond shall not exceed forty thousand dollars. The bond shall be issued by a U.S. Treasury-listed corporate surety

or a Tennessee domestic insurance company on forms provided by the department of codes administration.

B. It shall be the responsibility of the septic tank and overflow contractor to furnish to the department of codes administration a certificate of general liability insurance issued by a Tennessee-licensed company which provides a minimum of three hundred thousand dollars per occurrence combined single limits for bodily injury and property damage coverage. The certification of insurance must be submitted prior to renewal of the metropolitan contractor's certificate holder annual renewal. The insurance may not be canceled without at least thirty days' prior notice, in writing, to the director of codes administration. (Ord. 94-1226 § 3, 1994)

6.52.230 Examination required—Fee.

The proprietor, partner or officer of such septic tank and overflow contractor shall successfully complete a written examination, administered by the metropolitan board of plumbing examiners and appeals, designed to test the applicant's ability and knowledge in the field of private sewage disposal systems. The board shall certify the results of the applicant's competency to the director of codes administration. Such examination shall be a prerequisite to registration as a septic tank and overflow contractor. The fee to take the examination shall be twenty-five dollars. (Prior code § 33-1-82)

Chapter 6.54

SEXUALLY ORIENTED BUSINESSES

Sections:

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6.54.140 Prohibitions and unlawful sexual acts.
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6.54.160 Penalties and prosecutions.
6.54.170 Invalidity of part.

6.54.010 Definitions.

For the purpose of this chapter, the words and phrases used in this chapter shall have the following meanings, unless otherwise clearly indicated by the context:

A. "Aggravated rape" means as defined in the Tennessee Code Annotated Section 39-15-502.

B. "Aggravated sexual battery" means as defined in the Tennessee Code Annotated Section 39-15-504.

C. "Booth" means any booth, cubicle, stall, room or compartment which is designed, constructed or used to hold or seat patrons/customers and is designed such that the booth is separated from the common areas of the premises and is used for presenting sexually oriented entertainment including, but not limited to viewing sexually oriented moving pictures or viewing sexually oriented publications by any photographic, electronic, magnetic, digital or other means or medium (including, but not limited to, film, video or magnetic tape, laser disc, cd-rom, books, magazines or periodicals) for observation by patrons therein. "Booth" shall not mean a room or enclosure that is designed, constructed and regularly used to seat more than ten persons.

D. "Crimes of a sexual nature" means the crimes of rape, aggravated rape, aggravated sexual assault, public indecency, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure, prostitution, patronizing prostitution, promoting prostitution, or crimes committed in a jurisdiction other than Tennessee which, if committed in this state, would have constituted the crimes listed above. In the event that a felony from a jurisdiction other than Tennessee is not a named felony in this state, the elements of the offense shall be used to determine what classification the offense is given.

E. "Current entertainer" means an entertainer performing sexually oriented entertainment within the metropolitan area as of March 1, 1999.

F. "Employee" means any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of a sexually oriented business.

G. "Entertainer" means any person who provides live entertainment within a sexually oriented business as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.

H. "Existing sexually oriented business," means a sexually oriented business that is operating within the metropolitan area as of March 1, 1999.

I. "Indecent exposure" means as defined in the Tennessee Code Annotated Section 39-13-511.

J. "Location" means a single site for which only one use and occupancy permit would be required.

K. "Metropolitan area" means the general services district of the metropolitan government of Nashville and Davidson County.

L. "Metropolitan council" means the legislative body of the metropolitan government of Nashville and Davidson County, Tennessee.

M. "New entertainer" means an entertainer not performing sexually oriented entertainment within the metropolitan area as of March 1, 1999.

N. "New sexually oriented business" means a sexually oriented business not in operation as of March 1, 1999.

O. Deleted.

P. "Operator" means any person, partnership, limited partnership, joint venture, corporation or any other type of business entity operating, conducting or maintaining a sexually oriented business.

Q. "Patronizing prostitution" means as defined in the Tennessee Code Annotated Section 39-13-512.

R. "Promoting prostitution" means as defined in the Tennessee Code Annotated Section 39-13-512.

S. "Prostitution" means as defined in the Tennessee Code Annotated Section 39-13-512.

T. "Public indecency" means as defined in the Tennessee Code Annotated Section 39-13-511.

U. "Rape" means as defined in the Tennessee Code Annotated Section 39-15-503.

V. "Rape of a child" means as defined in the Tennessee Code Annotated Section 39-15-522.

W. "Sexual battery" means as defined in the Tennessee Code Annotated Section 39-15-505.

X. "Sexual exploitation of a minor" means as defined in the Tennessee Code Annotated Sections 39-17-1003, 39-17-1004 and 39-17-1005.

Y. "Sexually oriented" when used to modify film, movie, motion picture, videocassette, slides, or other photographic reproductions means a film, movie, motion picture videocassette, slides or other photographic reproduction that regularly depicts material which is distinguished or characterized by an emphasis on matter depicting or describing "specified sexual activities" or "specified anatomical areas" offered for observation by the patron(s) on the premises of a sexually oriented business.

Z. "Sexually oriented business/establishment" means any commercial establishment which for a fee or incidentally to another service, regularly presents material or exhibitions distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation by patrons therein.

1. "Sexually oriented bookstore" means an establishment having a majority of its stock in trade or a majority of its floor space in books, magazines, other periodicals, or any other items which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation of the patrons therein; or in conjunction therewith has facilities for the presentation of sexually oriented entertainment, including but not limited to sexually oriented movies, sexually oriented videos, sexually oriented films, or sexually oriented live entertainment, for observation by patrons therein.

2. "Sexually oriented nightclub" means a theater, concert hall, auditorium, nightclub, bar, restaurant, or similar commercial establishment which regularly features live performances that are characterized by any actual or simulated performance of "specified sexual activities" or the exposure of "specified anatomical areas," as defined in this section.

3. "Sexually oriented theater" means an enclosed building in which films, motion pictures, videocassettes, slides, or other photographic reproductions that are distinguished or characterized by an emphasis on depictions of "specified sexual activities" or "specified anatomical areas," as defined in this section, are regularly presented for observation by patrons therein.

4. "Sexually oriented video store" means a commercial establishment having a majority of its stock or a majority of its floor space dedicated to "sexually oriented videos," as defined in this section, which are rented or sold or presented for a fee or incidentally to another service; or in conjunction therewith, regularly presents on the premises sexually oriented motion pictures or sexually oriented films, "sexually oriented videos," or sexually oriented live exhibitions which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation by patrons therein.

a. "Sexually oriented videos" means a video, CD, laser disk, or similar medium with a cover that depicts "specified sexual activities" or "specified anatomical areas" or a transparent or less than opaque cover through which "specified sexual activities" or "specified anatomical areas" can be viewed.

AA. "Sexually oriented entertainment" means the regular presentation, for a fee or incidentally to another service, of material or exhibitions distinguished or characterized by an emphasis on matter depicting, describing or

relating to "specified sexual activities" or "specified anatomical areas" as defined in this section for observation by patrons therein.

BB. "Sexually oriented material" means "sexually oriented entertainment" and/or any material, including films, movies, motion pictures, videocassettes, slides, or other photographic reproductions, which regularly depicts material which is distinguished or characterized by an emphasis on matter depicting or describing "specified sexual activities" or "specified anatomical areas" offered for observation by the patron(s) on the premises of a sexually oriented business.

CC. "Specified anatomical areas" means:

1. Less than completely and opaquely covered:

a. Human genitals, pubic region,

b. Buttocks,

c. Female breasts below a point immediately above the top of the areola; and

2. Human male genitals in a discernibly turgid state, even if completely opaquely covered.

DD. "Specified sexual activities" means:

1. Human genitals in a state of sexual stimulation or arousal;

2. Acts of human masturbation, sexual intercourse or sodomy;

3. Fondling or erotic touching of human genitals, pubic region, buttock or female breasts.

EE. "Statutory rape" means as defined in the Tennessee Code Annotated Section 39-15-506. (Ord. BL99-61 §§ 1—5, 2000; Ord. 99-1814 §§ 1—5, 1999; Amdt. 1 § 1 with Ord. 99-1503 §§ 1—3, 1999; Ord. 97-1022 § 1, 1997; amended during 9-97 supplement; Amdt. 7 (part) and Amdt. 3 §§ 1 and 2 with Ord. 97-796 § 2 (part), 1997)

6.54.020 Sexually oriented business licensing board.

A. Establishment. A sexually oriented business licensing board is created and designated the metropolitan sexually oriented business licensing board (herein "board").

B. Membership—Terms.

1. The board shall consist of five members, who shall have been residents of the metropolitan area for not less than one year, and who shall continue to be eligible so long as they reside in the metropolitan area, to be appointed by the mayor and confirmed by a majority vote of the metropolitan council.

2. At least one of the five members shall be an attorney, and one of the five members shall be a health provider.

3. Of the five members first appointed, two shall be appointed for a term of two years, and two shall be appointed for a term of three years, and one shall be appointed for a term of four years. Thereafter, each member shall be appointed for a term of four years, and shall serve until his/her successor is appointed. Any vacancy other than the expiration of terms shall be filled for the unexpired term.

C. Election of Officers—Term. The board shall organize by the election of a chair and a vice-chair, who shall serve for a period of one year or until a successor shall have been chosen. The vice-chair is authorized to act in the place of the chair and in the same capacity as the chair when the chair is unavailable.

D. Meetings—Quorum Required—Minutes and Transcript.

1. The board shall hold two regular meetings each month at a time fixed by the board, and may hold such special meetings as may be necessary.

2. The attendance of at least a majority of the members of the board, not including unfilled positions, shall be required to constitute a quorum for the purpose of transacting business.

3. Minutes shall be kept of the meetings in permanent form and a record shall be kept of the action of the board with respect to every application for a license and/or a permit. The concurring vote of a majority of the members present and voting shall be necessary for the granting, revoking, suspending or any other action involving licenses or permits.

4. No transcript of the proceedings had before the board shall be in any form other than narrative, unless the board shall have been requested to provide for an exact copy of the testimony by an interested party at least twenty-four hours prior to a board meeting. The cost of an exact copy shall be borne by the person requesting the same.

E. Powers and Duties.

1. The board shall have jurisdiction over the licensing, regulating and controlling of all sexually oriented establishments as provided in this chapter, located in the metropolitan area.

2. The board may promulgate such bylaws, rules and regulations not inconsistent with state law, the Metropolitan Charter, or any ordinance, as it deems appropriate for the conducting of its business.

3. The board has the authority to subpoena witnesses to testify before the board.

F. Inspectors—Authority. The board is empowered to employ suitable person(s) as inspectors which inspectors shall not hold any civil service status. The board shall prescribe the duties of such inspectors so as to enforce the applicable provisions of this title.

G. Procedures for Hearings. This section shall apply to all hearings by the board including but not limited to hearings for revocation, suspension or denial of a license/permit.

1. Upon receiving a written request for a hearing, the board shall send the party requesting the hearing a notice stating the time and place of the hearing and the right to be represented by counsel.

2. At the hearing, the party requesting the hearing shall appear on his/her own behalf or be represented by counsel. All witnesses shall be sworn. The chair shall allow the party requesting the hearing to present witnesses on his/her own behalf and to cross-examine all witnesses testifying against him/her.

3. All decisions of the board shall be in writing, setting forth the findings of the board, and shall be signed by the chair or vice-chair.

4. Minutes shall be kept of all proceedings before the board in permanent form and a record shall be kept of the actions of the board with respect to all hearings.

5. A record (which may consist of a tape or similar electronic recording) shall be made of all oral proceedings. The record must be maintained by the board for a period of ninety days. Such record or any part thereof shall be transcribed at the request of any party at such party's expense.

6. The board will arrange for a court reporter to be present at any hearing after an initial adverse administrative decision. (Amdt. 1 with Ord. 99-1814 § 6, 1999; Amdt. 1 § 14 with Ord. 99-1503, 1999; Ord. 97-1022 § 3, 1997; Amdt. 7 (part) with Ord. 97-796 § 2 (part), 1997)

6.54.030 License required.

A. Except as provided in subsection F of this section, from and after March 1, 1999, no sexually oriented business shall be operated or maintained within the metropolitan area without first obtaining a license to operate issued by the board.

B. Any person, partnership, limited partnership, joint venture, corporation or any other type of business entity which desires to operate more than one sexually oriented business/establishment must have a license for each sexually oriented business/establishment.

C. Only one license may be issued for each sexually oriented business location.

D. No license or interest in a license may be transferred to any person, partnership or corporation.

E. It is unlawful for any entertainer or operator to knowingly work in or about, or to knowingly perform any service directly related to the operation of any unlicensed sexually oriented business. It is unlawful for any employee to knowingly work in or about, or to knowingly perform any service directly related to the operation of any unlicensed sexually oriented business while sexually oriented entertainment is being presented.

F. All existing sexually oriented businesses, as defined in Section 6.54.010, must submit an application for a license by March 15, 1999, or cease operations. All existing sexually oriented businesses which apply for a license by March 15, 1999, may continue to operate the sexually oriented business described in the application even if the board votes to deny the application where such denial is appealed to a court in accordance with Section 6.54.040(E)(3). All new sexually oriented businesses, as defined in Section 6.54.010, may submit an application at any time but may not operate until a license is granted except as permitted in Section 6.54.040(E)(4).

G. Any applicant found to have previously violated this chapter by operating or maintaining a sexually oriented business/establishment within the metropolitan area without a license, as evidenced by a judgement of a court, within one year immediately preceding the date of the application shall be ineligible for a license for one year from the date of the judgement. The fact that a trial court's judgement is being appealed shall have no effect on the disqualification of the applicant unless the judgement is stayed. (Ord. 99-1814 §§ 7, 8, 1999; Ord. 99-1503 §§ 4, 5, 1999; Ord. 97-1022 § 5, 1997; Amdt. 7 (part) with Ord. 97-796 § 2 (part), 1997)

6.54.040 Application for license.

A. Application.

1. Any person, partnership, limited partnership, joint venture, corporation or any other type of business entity desiring to secure a license shall make application to the board. The applicant shall file the original application with six copies. The original application shall be dated by the board and held in the files of the board. A copy of the application shall be distributed the next business day by the board to: the police department, the department of codes administration, the health department, and the applicant.

2. Application forms shall be available at the office of the board.

3. The application form shall include all the information indicated in subdivisions (5)(a) through (5)(l) of this subsection.

4. The following persons must be listed in the license application for any sexually oriented business that is a corporate entity of any kind: the registered agent and the name and address of all officers and directors of the corporation, and any stockholder holding a majority controlling percentage of the stock of a corporate applicant and who will be involved in the day-to-day operation and management of the business. The following persons must be listed in the license application for any sexually oriented busi-

ness that is a partnership, limited partnership, joint venture, or any other type of business: the name and address of all persons who will be involved in the day-to-day operation and management of the business.

5. The applicant shall furnish the following information under oath:

a. Name and address of the applicant, including all aliases (business address is sufficient);

b. Proof of the applicant's date of birth demonstrating that the applicant is at least eighteen years of age;

c. All residential addresses of the applicant for the past three years (for the purpose of facilitating the police investigation into the applicant's criminal background regarding crimes of a sexual nature);

d. Whether the applicant previously operated in this or any other county, city or state under a sexually oriented business/adult entertainment license/permit. Whether the applicant has ever had such a license/permit revoked or suspended, within the last year from the date of application, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation;

e. All convictions for crimes of a sexual nature, as defined in Section 6.54.010, punishable as a misdemeanor violation that have occurred within the past two years. All convictions for crimes of a sexual nature, as defined in Section 6.54.010, punishable as a felony that have occurred within the past five years;

f. All judgements by a court within one year for violations of the metropolitan zoning Section 17.64.260;

g. Fingerprints and two photographs at least two inches by two inches of the applicant (for the purpose of facilitating the police investigation into the applicant's criminal background regarding crimes of a sexual nature);

h. The address of the sexually oriented business to be operated by the applicant;

i. If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agent and the name and address of all officers and directors of the corporation, and any stockholder holding a majority controlling percentage of the stock of a corporate applicant and who will be involved in the day-to-day operation of the business;

j. If the applicant is a partnership, joint venture, or any other type of business, the application shall specify the name and address of all persons who will be involved in the day-to-day operation of the business;

k. A statement by the applicant that he/she is familiar with the provisions of this chapter and a statement swearing that information provided on the application is true and accurate.

6. The applicant shall provide the board with his/her application, a diagram, drawn to scale of the premises, including the location and layout of all booths and stages and the location of the clerk/manager's stand or counter. Though the diagram shall be drawn to scale, it does not have to be professionally prepared.

7. If any of the information on the application changes over the course of the time for which the license is issued, including any changes in the physical layout of the premises, the licensee shall inform the board, in writing, of the changes.

B. Inspections and Investigations.

1. The codes department shall, upon receipt of a copy of the application, inspect the premises to insure that the establishment complies with the unique physical layout requirements set out in Section 6.54.050(A)(1), 6.54.050(A)(3) and 6.54.130(C) of this chapter. The health department shall inspect the premises to insure compliance with applicable health code statutes, ordinances, and regulations. The police department shall investigate the applicant's criminal history collecting the applicant's fingerprints and 2 × 2 photo either by performing these functions or by reviewing these items which were provided by the applicant and by performing a background investigation for crimes of a sexual nature. The results of both the inspections and the investigation shall be filed in writing with the board no later than twenty days after the date the application was filed with the board. Any inspection or investigation information not filed with the board in the time period specified shall not prevent the applicant from receiving the license and shall be treated by the board as if the report revealed no violations of applicable statutes, ordinances, or regulations, no violations of the provisions of this chapter, no sexually-oriented business/adult entertainment zoning code violations and/or no applicable criminal history.

2. The code department shall confirm that any booths or stages conform with the submitted diagram and the requirements set out in Sections 6.54.050A and 6.54.130.

3. The police department shall complete its investigation and the codes department and health department shall complete their respective inspections and shall communicate the results to the board in writing within twenty days of receipt of the application. The written investigation from the codes department and health department shall end with substantially one of the following statements:

The location at _____ complies with Chapter 6.54 and the applicable health code sections of the metropolitan code.

The location at _____ does not comply with Chapter 6.54 and the applicable health

code sections of the metropolitan code. It is in violation of the following provisions: Section numbers of code violations.

The writing from the police department shall end with substantially the following statement:

The police department's criminal record check indicates that the persons listed on the application have/have not committed a crime of a sexual nature within the past five years. The persons listed on the application have committed the following crimes of a sexual nature:

Name Crime Date

4. If the building/structure has a valid use and occupancy permit, the applicant shall provide the board with a copy of the valid use and occupancy permit which shall be made part of the file.

C. Board Action on Inspection and Investigation Results.

1. Within fifteen days of receiving the results of the investigation conducted by the police department and the inspections by the codes department, and health department the board will meet and determine if the applicant is in compliance with this chapter and the applicable health statutes, ordinances and regulations.

2. If the board determines that the applicant is in compliance with this chapter, the applicable health statutes, ordinances and regulations, and the applicant has not committed a crime of a sexual nature, as defined in Section 6.54.010, is at least eighteen years of age, and has not given any false or misleading information on the application or omitted any material facts from the application, then the board shall grant the license. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

3. If the board fails to meet within the specified time period, fails to have a quorum, or fails to take action on the application within the specified time period, then the license shall be deemed approved and sent to the applicant by United States Mail to the address listed on the application within two days of the events described in this paragraph.

4. In the event the board denied the application in accordance with the provisions of this chapter, such denial and the reason for the denial shall be mailed to the applicant the next business day after the board meeting reviewing the results of the investigation and inspections.

5. If it is determined by the board, using the application and the inspection reports that the applicant has violated the provisions of the zoning code applicable to sexually oriented/adult entertainment businesses within the past two years, then the applicant is ineligible for a license for one year from the date the citation was sustained. A violation of the zoning code shall be evidenced by a judgement of a court. The fact that the judgement is being appealed shall have no effect on the disqualification of the applicant unless the judgment is stayed.

6. Any investigation reports or inspection reports not filed with the board in the time period specified in this section shall not prevent the applicant from receiving his/her license and shall be treated by the board as if that department approved the application.

7. If the board determines that the actual structure does not comply with Section 6.54.050(A) or the submitted diagram, then the applicant is not in compliance with this code section and the license shall be denied in accordance with Section 6.54.050(A) and (B).

8. If in the course of the investigation it is discovered any false or misleading statement or information was given on the application, or material facts were omitted from the application, the board shall deny the application in accordance with Section 6.54.050(B)(3). False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

9. Within fifteen days of receiving the results of the investigation conducted by the police department, and inspection reports from the codes department, and health department, if the board shall determine that the applicant is not in compliance with this chapter, the zoning code or the applicable health statutes, ordinances and regulations, the applicant shall be notified in writing, the next business day, that the license is denied for failing to comply with applicable statutes, ordinances and regulations. This notice shall specify the violation. If the applicant can come into compliance as described in subsection D of this section, the denial shall not take effect. The notice shall also specify that the applicant may request a hearing within five days, cure the violation within fifteen days and request reinspection or request an extension of time.

10. The board has the discretion to hold any application for further investigation if: (a) the initial investigation requires investigation into out-of-state records; or (b) verification of out-of-state employment relating to a sexually oriented business or a sexually oriented business license/permit or similar business license/permit is needed. Such additional investigation shall not exceed an additional ten days from the end of the initial fifteen days specified in subsection (C)(1) of this section, unless otherwise agreed to by the applicant.

11. Whenever an application is denied or held for further investigation, the board shall advise the applicant

in writing the next business day of the reasons for such action. Upon conclusion of the additional investigation, the board shall advise the applicant in writing the next business day whether the application is granted or denied.

12. Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his/her refusal or failure to appear at a reasonable time and place for examination under oath regarding such application or his/her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he/she is ineligible for such license and shall be grounds for denial thereof by the board. This in no way requires the applicant to agree to additional time extensions beyond that allowed in subsection (C)(10) of this section.

D. Extensions of Time for the Applicant.

1. If the license is denied, the applicant may reinstate his/her application by notifying the board in writing that he/she has come into compliance and requests reinspection.

a. The applicant has fifteen days from the mailing of the denial to cure the violation and notify the board or to request an extension pursuant to subsection (D)(2) of this section. The applicant has the responsibility to contact the board.

b. Once contacted, the board shall notify the appropriate inspector the next business day that the applicant believes he/she has come into compliance.

c. Upon notification by the board, the appropriate inspector shall return to the location for reinspection and shall submit another written report as indicated in subsection (B)(3) of this section. The inspector has five days from the date he/she was notified by the board to reinspect the premises and inform the board as to whether the applicant has come into compliance in the same manner described in subsection (B)(3) of this section and using the same language required in subsection (B)(3) of this section.

d. Based on the report of the inspector(s), the board shall determine if the applicant has come into compliance, and if so the board shall issue the license at the next regular meeting. The next meeting shall be held no later than fifteen days after the inspection report is filed with the board. Any inspections not filed with the board in the time period specified in this section will be treated as described in subsection (C)(6) of this section.

e. If the applicant fails to either contact the appropriate inspector to report that the code violations have been corrected, or if the code violations have not been corrected, then the application will be denied.

2. If the process of curing the violation requires more time than that provided in subsection (D)(1) of this section, the applicant may request an extension from the board. If the applicant does not make such a request in the time allotted, the application is denied.

a. The request for an extension must be made in writing within fifteen days from the denial.

b. The board shall hear the applicant's request for an extension at the next regular meeting. The next meeting shall be held no later than fifteen days after the request for the extension is received by the board.

c. The hearing on the extension shall follow the same rules as set out in Section 6.54.020(G) except that the decision of the board shall grant or deny the extension and a decision to grant an extension shall take effect immediately.

d. An extension shall only be granted when the codes inspector and the health inspector agree that an extension will not endanger the health or safety of the community and the board determines that the applicant has demonstrated a good faith effort to make the necessary repairs or cure the violation(s) in a timely manner.

3. If the applicant fails to follow the procedure set out in this subsection then the application is denied and the applicant must reapply to obtain a license. Following the procedure set out in subsections (D)(1) or (D)(2) of this section requires no additional fees. Once the deadlines to cure the violation or ask for an extension of time have passed, the initial denial shall be treated as a denial of the application.

E. Denial of the License Application.

1. When an application is denied, the applicant has the right to request a hearing within five days of the board's notification.

a. The request shall be in writing and filed with the board within five days of the board's decision.

b. The board shall hear all the evidence pertaining to the denial of the application at the next regular meeting. The next meeting shall be held no later than fifteen days after the request described above is mailed.

c. At the hearing, the applicant may present evidence as to why his/her application should not be denied. If the applicant fails to appear at the hearing before the board he/she will have waived the right to present evidence to the board. Failing to appear before the board will not preclude the applicant's right to appeal any denial to the circuit or chancery courts of Davidson County.

d. The board shall affirm or reject the denial of the application at the hearing and in writing state the reasons for the board's decision.

e. The denial of the application shall be mailed by U.S. mail the next business day to the address of the applicant as listed on the application.

f. If the board fails to meet within the specified time period, fails to have a quorum, or fails to take action on the application within the specified time period, then the license shall be deemed approved and sent to the applicant by United States Mail to the address listed on the application within two days of that specified time period.

2. Any denial of an application for a license may be immediately appealed to the circuit or chancery courts of Davidson County. The metropolitan department of law may institute proceedings for a declaratory judgment. If the applicant chooses to appeal by filing a petition for a writ of certiorari, then the metropolitan government shall file the record of all proceedings with the court within ten days from the date the metropolitan government was served with a petition for a writ of certiorari.

3. For an existing sexually oriented business, as defined in Section 6.54.010, any adverse administrative decision that is appealed to any court shall not take effect until that decision has been upheld by the court after adjudication on the merits. If the court fails to rule within forty days of the filing of an appeal, a license shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the license then that license shall be revoked in accordance with Section 6.54.150(A)(8). Adverse administrative decisions of the board, which are not appealed shall not take effect for sixty days from the date of the decision to allow the affected party time to seek judicial review.

4. For a new sexually oriented business, as defined in Section 6.54.010, any adverse administrative decision shall take effect the day the decision is issued by the board. If the adverse administrative decision is appealed to a court, and if the court fails to rule within forty days of the filing of an appeal, a license shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the license then that license shall be revoked in accordance with Section 6.54.150(A)(8). (Ord. 99-1814 §§ 9—32, 1999; Amdt. 1 §§ 2, 3 with Ord. 99-1503 §§ 6—30, 1999; Ord. 97-1022 §§ 6—39, 1997; amended during 9-97 supplement; Amdt. 6 § 5 (part) with Ord. 97-796 § 2 (part), 1997)

6.54.050 Standards for issuance of license.

A. Physical Layout of Sexually Oriented Business.

1. Any sexually oriented business having available for customers, patrons or members any booth, for the viewing of any sexually oriented entertainment, including but not limited to sexually oriented films, sexually oriented movies, sexually oriented videos, shall submit a diagram under Section 6.54.040(A)(6) and the diagram submitted must be substantially the same as the structure observed by the inspector. Further, the structure and the diagram shall comply with the following requirements:

a. Access. Each booth shall be totally accessible to and from aisles and public areas of the sexually oriented business and shall be unobstructed by any door, gate, lock or other control-type devices.

b. Construction. Every booth shall meet the following construction requirements:

i. Each booth shall be separated from adjacent booths and any nonpublic areas by a solid or opaque wall;

ii. Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same;

iii. All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light colored, nonabsorbent, smooth textured and easily cleanable;

iv. The floor must be light colored, nonabsorbent, smooth textured and easily cleanable; and

v. The lighting level of each booth shall be a minimum of ten footcandles at all times as measured from the floor.

2. The provisions enunciated in subdivision 1 of this subsection shall not apply to bathrooms unless the bathroom contains any equipment which would allow the viewing of sexually oriented films, sexually oriented movies, sexually oriented videos.

3. Any live performance of sexually oriented entertainment shall occur upon a stage at least eighteen inches above the immediate floor level and removed at least three feet from the nearest customer. A three-foot boundary from the outer edge of the stage shall be indicated on the floor by a rail, barrier, lighting, luminous tape or paint, or any other method which will make the boundary visible in a darkened condition so that the customer will not invade the three-foot boundary from the stage with any portion of his/her body.

B. Applicant.

1. To receive a license to operate a sexually oriented business, an applicant must meet the following standards:

a. If the applicant is an individual, the applicant shall be at least eighteen years of age;

b. If the applicant is a corporation, all officers, directors and stockholders required to be named under Section 6.54.040(A)(5)(i) shall be at least eighteen years of age;

c. If the applicant is a partnership, joint venture, or any other type of organization where two or more persons have a financial interest, all persons having a financial interest in the business and who are involved in the day-to-day operation of the business shall be at least eighteen years of age.

2. No individual applicant, no officer, director or stockholder required to be named under Section 6.54.040(A)(5)(i) and no partners required to be named under Section 6.54.040(A)(5)(j) convicted of a crime of a sexual nature, as defined in Section 6.54.010, in any jurisdiction shall be eligible to receive a license for the time period described below.

a. If the conviction was for a misdemeanor violation, then the applicant shall be ineligible to receive a permit for two years from the date of the conviction.

b. If the conviction was for a felony violation, then the applicant shall be ineligible to receive a permit for five years from the date of the conviction.

c. The time is computed from the date of the conviction by the trial court to the date of the application. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant until the trial court's conviction is reversed.

3. The applicant shall not have given any false or misleading information on the application, or omitted any material facts from the application. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

a. If the applicant gave any false or misleading information or omitted any material facts, then the applicant shall be ineligible to receive a license for one year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or to a crime of a sexual nature, as defined in Section 6.54.010.

b. If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a license until he/she is eighteen or until one year has passed from the date of the application which contained the misleading statements or omissions whichever is later.

c. If the misleading statements or omissions referred to a crime of a sexual nature, as defined in Section 6.54.010, then the applicant shall not be eligible to receive a license until the time period described in subsection (B)(2)(a) through (c) of this section has expired or until one year has passed from the date of the application which contained the misleading statements or omissions, whichever is later.

d. If the misleading statements or omissions referred to violations of Section 17.36.260 of the zoning code, then the applicant shall not be eligible to receive a permit until the time period described in subsection (B)(5) of this section has expired or until one year has passed from the date of the application which contained the misleading statements or omissions, whichever is later.

4. An applicant having had a sexually oriented business/establishment license or similar license/permit revoked within the last year shall not be eligible for a license for one year from the date of revocation.

5. No applicant shall have been found to have previously violated Section 17.36.260 of the metropolitan zoning code applicable to sexually oriented/adult entertainment businesses, as evidenced by the judgement of a court within one year immediately preceding the date of the application. If such violations exist, the applicant shall be ineligible for a license for one year from the date the citation was sustained. The fact that a trial court's judgement is being appealed shall have no effect on the disqualification of the applicant until the trial court's judgement is reversed.

6. Any applicant found to have previously violated this chapter by operating or maintaining a sexually oriented business/establishment within the metropolitan area without a license, as evidenced by a judgement of a court, within one year immediately preceding the date of the application shall be ineligible for a license for one year from the date of the judgement. The fact that a trial court's judgement is being appealed shall have no effect on the disqualification of the applicant unless the judgement is stayed. (Ord. 99-1814 §§ 33—35 1999; Ord. 99-1503 §§ 31—49, 1999; Ord. 97-1022 §§ 40—45, 1997; amended during 9-97 supplement; Amdt. 7 (part) with Ord. 97-796 § 2 (part), 1997)

6.54.060 Permit required.

A. Except as provided in subsection B of this section, from and after March 1, 1999, no person shall be an entertainer in a sexually oriented business within the metropolitan area without first obtaining a permit issued by the board.

B. All current entertainers, as defined in Section 6.54.010, wishing to continue to perform sexually oriented entertainment must submit an application for a permit by March 15, 1999. All current entertainers, who apply for a permit by March 15, 1999, may continue to perform sexually oriented entertainment even if the board votes to deny the application where such denial is appealed to a court in accordance with Section 6.54.070(D)(3). All new entertainers, as defined in Section 6.54.010, may submit an application at any time but may not perform sexually oriented entertainment until a permit is granted except as described in Section 6.54.070(D)(4).

C. Any entertainer found to have previously violated this chapter by providing sexually oriented entertainment in a sexually oriented business/establishment within the metropolitan area without a permit, as evidenced by a judgement of a court, within one year immediately preced-

ing the date of the application shall be ineligible for a permit for one year from the date of the judgement. The fact that a trial court's judgement is being appealed shall have no effect on the disqualification of the applicant unless the judgement is stayed. (Ord. 99-1814 §§ 36, 37, 1999; Ord. 99-1503 § 50, 1999; Ord. 97-1022 §§ 46, 47, 1997; Amdt. 7 (part) and Amdt. 6 § 7 with Ord. 97-796 § 2 (part), 1997)

6.54.070 Application for permit.

A. Application.

1. Any person desiring to secure a permit shall make application to the board. The applicant shall file the original application with three copies. The original application shall be dated by the board and held in the files of the board. A copy of the application shall be distributed the next business day by the board to the Metropolitan Nashville police department and the applicant.

2. Application forms shall be available at the office of the board. Applicants may obtain their application from the codes department. Applicants must also submit with each application two 2 × 2 photos.

a. Background Check. All background checks shall be completed by the metropolitan police department. The police department may be notified of a need for a background check in two ways. The applicant brings his/her application, including one of the two photos to the police department and has his/her fingerprints taken at the police department. The police then begin the background check and once completed, send the background check, application, fingerprint card, and photo to the office of the board. In the alternative, the applicant can obtain fingerprints as described below, turn into the board a complete application including, fingerprints and two photos and the board shall send the complete application to the police department requesting a background check. The police will return the complete application with the completed background check to the office of the board.

b. Fingerprints. The applicant shall have his/her fingerprints completed by the police department. If the applicant intends to mail his/her application to the board then he/she shall have his/her local law enforcement agency take his/her fingerprints and photograph and that law enforcement agency shall mail the fingerprints directly to the metropolitan police department.

c. Fees. If the applicant brings his/her application to the police department, the police department shall not charge the applicant any additional fee for fingerprinting or a background check. If the applicant has the fingerprinting performed without informing the police department that it is for his/her application for a sexually oriented entertainer permit, then the applicant may retain the receipts for the fingerprinting and give them to the codes department when the applicant files his/her application. The codes department shall subtract the expenses for the fingerprints from the one hundred dollar permit fee, and the applicant shall pay the difference. This same procedure applies if the applicant has his/her fingerprints and photographs taken by their local law enforcement agency and mailed directly to the metropolitan police department. Photos can be taken by the codes department at no additional fee or the applicant may have his/her photo taken elsewhere.

3. The application form shall include all information indicated in subdivisions (4)(a) through (4)(h) of this subsection.

4. The applicant shall furnish the following information under oath:

a. Name and address including all aliases;

b. Proof of the applicant's date of birth demonstrating that the applicant is at least eighteen years of age;

c. All residential addresses of the applicant for the past three years (for the purpose of facilitating the police investigation into the applicant's criminal background regarding crimes of a sexual nature);

d. The applicant's height, weight, color of eyes, and hair (for the purpose of facilitating the police investigation into the applicant's criminal background regarding crimes of a sexual nature);

e. Whether the applicant previously entertained in this or any other county, city, or state under a sexually oriented business license/permit or similar business license/permit within the last year. For whom the applicant was employed or associated at the time. Whether the applicant has had such a license/permit revoked or suspended within the last year and the reason therefor and the business entity or trade name for whom the applicant was employed or associated at the time of such suspension or revocation;

f. All convictions for crimes of a sexual nature, as defined in Section 6.54.010, punishable as a misdemeanor violation that have occurred within the past two years. All convictions for crimes of a sexual nature, as defined in Section 6.54.010, punishable as a felony that have occurred within the past five years;

g. Fingerprints and two photographs at least two inches by two inches of the applicant (for the purpose of facilitating the police investigation into the applicant's criminal background regarding crimes of a sexual nature); and

h. A statement by the applicant that he/she is familiar with the provisions of this chapter and a statement swearing that information provided on the application is true and accurate.

B. Investigation. The police department shall investigate the applicant's criminal history by collecting the applicant's fingerprints and 2 × 2 photo and by performing a background investigation for crimes of a sexual nature. The results of the investigation shall be filed in writing with the board no later than twenty days after the date the application was filed with the board. Any investigation information not filed with the board in the time period specified shall not prevent the applicant from receiving his/her permit and shall be treated by the board as if the report revealed no applicable criminal history.

C. Board Action on the Investigation Results.

1. Within fifteen days of receiving the results of the investigation conducted by the police department the board will meet and if it determines that the applicant has not been convicted of a crime of a sexual nature, as defined in Section 6.54.010, has not had a similar type of permit/license revoked in the last year, is at least eighteen years of age, and has not given any false or misleading information on the application or omitted any material facts from the application then the board shall grant the permit. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

2. If the board fails to meet within the time period specified, or fails to have a quorum at the meeting, then the permit shall be deemed approved and sent to the applicant by United States mail to the address listed on the application.

3. In the event the board denied the application in accordance with Section 6.54.080, such denial and the reason for the denial shall be mailed to the applicant the next business day after the board meeting reviewing the results of the investigation.

4. Any investigation reports not filed with the board in the time period specified in this section shall not prevent the applicant from receiving his/her permit and shall be treated by the board as if that department approved the application.

5. If in the course of the investigation it is discovered any false or misleading statements or information was given on the application, or material facts were omitted from the application, the board shall deny the application in accordance with Section 6.54.080. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

6. The board has the discretion to hold any application for further investigation if: (a) the initial investigation requires investigation into out-of-state records; or (b) verification of out-of-state employment relating to a sexually oriented business or the revocation of a sexually oriented business license/permit or similar business license/permit is needed. Such additional investigation shall not exceed an additional ten days from the end of the initial fifteen days specified in subsection (D)(1) of this section, unless otherwise agreed to by the applicant.

7. Whenever an application is denied or held for further investigation, the board shall advise the applicant in writing the next business day of the reasons for such action. Upon conclusion of the additional investigation, the board shall advise the applicant in writing the next business day whether the application is granted or denied.

8. Failure or refusal of the applicant to give any information relevant to the investigation of the application, or his or her refusal or failure to appear at a reasonable time and place for examination under oath regarding such application or his or her refusal to submit to or cooperate with any investigation required by this chapter, shall constitute an admission by the applicant that he/she is ineligible for such permit and shall be grounds for denial thereof by the board. This in no way requires the applicant to agree to additional time extensions beyond that allowed in subsection (C)(6) of this section.

D. Denial of the Permit Application.

1. When an application is denied, the applicant has the right to request a hearing within five days of the board's decision.

a. The request shall be in writing and filed with the board within five days of the board's decision.

b. The board shall hear all the evidence pertaining to the denial of the application at the next regular meeting. The next meeting shall be held no later than fifteen days after the request described above is mailed.

c. At the hearing, the applicant may present evidence as to why his/her application should not be denied. If the applicant fails to appear at the hearing before the board he/she will have waived the right to present evidence to the board. Failing to appear before the board will not preclude the applicant's right to appeal any denial to the circuit or chancery courts of Davidson County.

d. The board shall affirm or reject the denial of the application at the hearing and in writing state the reasons for the board's decision.

e. The denial of the application shall be mailed by U.S. mail the next business day to the address of the applicant as listed on the application.

f. If the board fails to meet within the specified time period, fails to have a quorum, or fails to take action on the application within the specified time period, then the permit shall be deemed approved and sent to the applicant by United States Mail to the address listed on the application within two days of that specified time period.

2. Any denial of the application for a permit may be immediately appealed to the circuit or chancery courts of Davidson County. The metropolitan department of law may also initiate proceedings for a declaratory judgment. If the applicant chooses to appeal by filing a petition for a writ of certiorari, then the metropolitan government shall file the record of all proceedings with the court within ten days from the date the metropolitan government was served with a petition for a writ of certiorari.

3. For any current entertainer, as defined in Section 6.54.010, any adverse administrative decision that is appealed to any court shall not take effect until that decision has been upheld by the court after adjudication on the merits. If the court fails to rule within forty days of the filing of an appeal, a permit shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the permit then that permit shall be revoked in accordance with Section 6.54.150(C)(8). Adverse decisions of the board, which are not appealed shall not take effect for sixty days from the date of the decision to allow the affected party time to seek judicial review.

4. For a new entertainer, as defined in Section 6.54.010, any adverse administrative decision shall take effect the day the decision is issued by the board. If the adverse administrative decision is appealed to a court, and if the court fails to rule within forty days of the filing of an appeal, a permit shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the permit then that permit shall be revoked in accordance with Section 6.54.150(C)(8).

E. The permit carried by the entertainer shall contain only the following information:

1. A photo identification as provided by the applicant;

2. A computer-generated number assigned to each applicant, corresponding to the file maintained on each applicant by the sexually oriented business licensing board; and

3. The date the permit was issued. (Ord. 99-1814 §§ 38—46, 1999; Amdt. 1 §§ 4—7 with Ord. 99-1503 §§ 51—64, 1999; Ord. 97-1022 §§ 48—62, 1997; amended during 9-97 supplement; Amdt. 7 (part), Amdt. 6 § 5 (part) and Amdt. 1 with Ord. 97-796 § 2 (part), 1997)

6.54.080 Standards for issuance of a permit.

A. Applicant. To receive a permit as an entertainer, an applicant must meet the following standards:

1. The applicant shall be at least eighteen years of age.

2. No applicant convicted of a crime of a sexual nature, as defined in Section 6.54.010, in any jurisdiction shall be eligible to receive a permit for the time period described below.

a. If the conviction was for a misdemeanor violation, then the applicant shall be ineligible to receive a permit for two years from the date of the conviction.

b. If the conviction was for a felony violation, then the applicant shall be ineligible to receive a permit for five years from the date of the conviction.

c. The time is computed from the date of the application to the date of the conviction.

3. The applicant shall not have given any false or misleading information on the application, or omitted any material facts from the application. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

a. If the applicant gave any false or misleading information or omitted any material facts, then the applicant shall be ineligible to receive a permit for one year from the date of the application which contained the misleading statements or omissions unless the omission or misleading statement referred to the age of the applicant or to a crime of a sexual nature, as defined in Section 6.54.010. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application.

b. If the misleading statements or omissions referred to the age of the applicant, then the applicant shall not be eligible to receive a permit until he/she is eighteen or until one year has passed from the date of the application which contained the misleading statements or omissions, whichever is later.

c. If the misleading statements or omissions referred to a crime of a sexual nature, as defined in Section 6.54.010, then the applicant shall not be eligible to receive a permit until the time period described in subsection (A)(2)(a) through (c) of this section has expired or until one year has passed from the date of the application which contained the misleading statements or omissions, whichever is later.

4. The applicant shall not have had a sexually oriented business permit/license or similar business permit revoked within the last year immediately preceding the application.

5. Any applicant found to have previously violated this chapter of the metropolitan code by providing sexually oriented entertainment within the metropolitan area without a permit, as evidenced by a judgement of a court, within one year immediately preceding the date of the application shall be ineligible for a permit for one year from

the date of the judgement. The fact that a trial court's judgement is being appealed shall have no effect on the disqualification of the applicant unless the judgement is stayed. (Ord. 99-1814 §§ 47, 1999; Amdt. 1 § 8 with Ord. 99-1503 §§ 65—70, 1999; Ord. 97-1022 § 63 (part), 1997)

6.54.090 Fees.

A. A license fee of three hundred fifty dollars shall be submitted with the application for a license. If the application is denied, one-half of the fee shall be returned.

B. A permit fee of fifty dollars shall be submitted with the application for a permit. If the application is denied, one-half of the fee shall be returned. (Ord. BL99-61 § 6, 2000; Ord. 97-1022 § 63 (part), 1997; Ord. 97-796 § 2 (part), 1997)

6.54.100 Display of license or permit.

A. The license shall be displayed in a conspicuous public place in the sexually oriented business.

B. The permit shall be carried by or be accessible to the entertainer during that entertainer's working hours and shall be displayed upon request of any member of the police department, health inspector, or board inspector.

C. If the business for which a license was issued ceases to exist in that a majority of the business assets have been liquidated, or the business has closed and ceased operations, then the license shall be returned to the board and cease to be valid. (Ord. 99-1503 §§ 67(2), 71, 1999; Ord. 97-1022 § 63 (part), 1997; Ord. 97-796 § 2 (part), 1997)

6.54.110 Renewal of license or permit.

A. Every license/permit issued pursuant to this chapter will terminate at the expiration of one year from the date of issuance unless sooner revoked and must be renewed before operation the following year.

B. Any operator desiring to renew a license or any entertainer desiring to renew a permit shall make application to the board. The application for renewal must be filed not later than sixty days before the license/permit expires. The original application for renewal plus the number of copies listed in Section 6.54.040A or 6.54.070A shall be filed and dated by the board.

C. The board shall send a copy to the same departments who would receive a copy of the initial application. These departments shall process the application in the same manner and within the same time limits which apply to the initial application.

D. The board shall provide the applicant with a copy of the application from the previous year and a new application form.

E. The renewal form shall be the same form described in Section 6.54.040A for a license and Section 6.54.070A for a permit except as indicated below in subsection H of this section.

F. For a renewal, the applicant may fill out the new form in its entirety or fill in any information which has changed over the year and is now different than the information indicated on the application from the prior year. The renewal must also include an updated background check by the police department and an updated 2 × 2 photo. The renewal does not require resubmission of fingerprints submitted with the initial application. However, if new or additional persons are involved in the day to day operation of the licensed business those persons must submit fingerprints as described above.

G. If the applicant chooses to only include information concerning items which have changed, he/she will swear to the accuracy of both the information contained in the renewal form and the information attached from the prior year.

H. The renewal application form shall be the same form described in Section 6.54.040A for a license or Section 6.54.070A for a permit except the final line shall state:

> I swear the information I have given in the application from 199 ____ is still accurate and any facts or circumstances which have changed are indicated in this application for a renewal of the license/permit.
>
> _____
>
> signature of applicant

I. A license renewal fee of five hundred dollars shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of one hundred dollars shall be assessed against the applicant who files for a renewal less than sixty days before the license expires. If the renewal is denied, one-half of the fee collected shall be returned.

J. A permit renewal fee of one hundred dollars shall be submitted with the application for renewal. In addition to such renewal fee, a late penalty of fifty dollars shall be assessed against the applicant who files for renewal less than sixty days before the permit expires. If the renewal is denied, one-half of the fee shall be returned.

K. The application for a renewal is subject to the same rules and limitations as the initial application.

L. When an application for renewal is denied, the applicant has the right to request a hearing within five days of the board's decision.

1. The request shall be in writing and filed with the board within five days of the board's decision.

2. The board shall hear all the evidence pertaining to the denial of the renewal application at the next regular meeting. The next meeting shall be held no later than fifteen days after the request described above is mailed.

3. At the hearing, the applicant may present evidence as to why his/her renewal application should not be denied. If the applicant fails to appear at the hearing before the board he/she will have waived the right to present evidence to the board. Failing to appear before the board will not preclude the applicant's right to appeal any denial to the circuit or chancery courts of Davidson County.

4. The board shall affirm or reject the denial of the renewal application at the hearing and in writing state the reasons for the board's decision.

5. The denial of the renewal application shall be mailed by U.S. mail the next business day to the address of the applicant as listed on the application.

6. Any adverse administrative decision regarding the renewal of a license/permit that is appealed to any court shall not take effect until that administrative decision has been upheld by the court after adjudication on the merits. If a court fails to rule within forty days of the filing of an appeal, a new license/permit shall issue. When the court makes a determination after adjudication on the merits that upholds the administrative denial of the renewal for a license/permit then that license/permit shall be revoked in accordance with Section 6.54.150(A)(8) and (C)(8). Adverse decisions of the board which are not appealed shall not take effect for sixty days from the date of the decision to allow the affected party time to seek judicial review.

M. The denial of any renewal for a license/permit may be appealed to the circuit or chancery courts of Davidson County by the applicant. The metropolitan department of law may initiate proceedings for a declaratory judgment in the circuit or chancery court for Davidson County. If the applicant or the permittee/licensee chooses to appeal by filing a petition for a writ of certiorari, then the metropolitan government shall file the record of all proceedings with the court within ten days from the date the metropolitan government was served with the petition for a writ of certiorari. (Amdt. 1 § 9 with Ord. 99-1503 §§ 72, 73, 1999; Ord. 97-1022 §§ 63 (part), 64—68, 1997; amended during 9-97 supplement; Amdt. 7 (part) and Amdt. 6 § 5 (part) with Ord. 97-796 § 2 (part), 1997)

6.54.120 Hours of operation.

A. All sexually oriented businesses shall be closed between the hours of three a.m. and eight a.m. Monday through Saturday and between the hours of three a.m. and twelve noon on Sundays.

B. All public areas of every sexually oriented business shall be open to inspection at any time during normal business hours by the following departments: police, codes, board inspector, and health. (Ord. 99-1503 § 74, 1999; Ord. 97-1022 § 63 (part), 1997; Amdt. 7 (part) and Amdt. 6 § 8 with Ord. 97-796 § 2 (part), 1997)

6.54.130 Responsibilities of the operator.

A. An operator is responsible for the conduct of all entertainers while on the licensed premises and any act or omission of any entertainer constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, renewed or a penalty assessed subject to the limits described in Section 6.54.150(E).

B. No employee on the premises for furthering the business, but not including independent contractors on the premises for repairs and construction, of a sexually oriented business shall allow any minor to loiter around or to frequent a sexually oriented business or to allow any minor to view sexually oriented entertainment as defined herein on the premises of a licensed business.

C. Every sexually oriented business shall be physically arranged in such a manner that the entire interior portion of any booths, wherein sexually oriented motion pictures, sexually oriented movies, sexually oriented films or sexually oriented videos are viewed, shall be visible from the common area of the premises having at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same. Visibility shall not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction whatsoever. Further, any wall forming any portion of the booths, shall be solid and without any openings, extended from the floor to a height of not less than six feet. This section shall be construed in conjunction with Section 6.54.050A.

D. It is unlawful to install enclosed booths for the purpose of viewing of sexually oriented motion pictures, sexually oriented movies, sexually oriented films, sexually oriented videos. The licensee shall be responsible for and shall provide that any booth, or area used for the purpose of viewing sexually oriented motion pictures, sexually oriented movies, sexually oriented films or sexually oriented videos shall be readily accessible at all times and shall be continuously open to view in its entirety.

E. Live sexually oriented entertainment shall not be permitted in booths.

F. A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

This Sexually Oriented Business is regulated by The Metropolitan Code of Nashville and Davidson County, Chapter 6.54 which provides that no customer shall be permitted to have any physical contact with any entertainer

on the premises during any performance. All performances shall only occur upon a stage at least eighteen inches above the immediate floor level at least three feet from the nearest customer.

G. It shall be the duty of the operator, to ensure that the line of sight and view area between the common area and any booths remain unobstructed by any doors, walls, merchandise, display racks or other materials at any time that any patron is permitted access to any booth. Entertainers and employees, on the premises for furthering the business, not including independent contractors on the premises for repairs or construction, shall not place any obstructions in front of any booths at any time that any patron is permitted access to any booth.

H. It shall be the duty of the operator and employees on the premises for furthering the business, not including independent contractors on the premises for repairs or construction, to ensure that the illumination in booths, described in Section 6.54.050(A)(1)(b)(v) is maintained at all times that any patron is present on the premises.

I. No operator shall allow openings of any kind to exist between booths, and no person, including entertainers and employees shall make or attempt to make an opening of any kind between any booths.

J. The operator or his/her designee shall, during each business day, regularly inspect the walls between the booths, to determine if any openings or holes exist. If such openings exist it is the duty of the operator to repair the damage as soon as possible. No patron shall be permitted access to a booth, where an opening or a hole exists. It shall be the duty of the operator to ensure those booths are unoccupied by patrons until the opening is repaired or covered. (Ord. 99-1814 § 48, 1999; Amdt. 1 § 10 with Ord. 99-1503 §§ 75—84, 1999; Ord. 97-1022 §§ 63 (part), 69—73, 1997; Amdt. 7 (part) with Ord. 97-796 § 2 (part), 1997)

6.54.140 Prohibitions and unlawful sexual acts.

A. No operator, entertainer or employee on the premises for furthering the business, not including independent contractors on the premises for repairs or construction, of a sexually oriented business shall permit to be performed, offer to perform, perform or allow customers, employees or entertainers to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia on the premises.

B. No operator, entertainer or employee on the premises for furthering the business, not including independent contractors on the premises for repairs or construction, shall encourage or permit any person upon the premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any entertainer, operator or employee.

C. No customer shall be permitted to have any physical contact with any entertainer on the licensed premises while the entertainer is engaged in a performance of live sexually oriented entertainment. All performances of live sexually oriented entertainment shall only occur upon a stage at least eighteen inches above the immediate floor level and removed at least three feet from the nearest customer.

D. Only one individual shall occupy a booth at any time. No occupant of a booth shall engage in any type of copulation, masturbation or the display of specified anatomical areas as defined herein or cause any bodily discharge of urine, feces or semen while in the booth. No individual shall damage or deface any portion of the booth.

E. Live sexually oriented entertainment shall not be permitted in booths.

F. No customer shall invade the three-foot boundary from the outer edge of the stage as required to be designated by Section 6.54.050(A)(3). (Ord. 99-1814 §§ 49, 50, 1999; Ord. 99-1503 §§ 85—87, 1999; Ord. 97-1022 § 63 (part), 1997; amended during 9-97 supplement; Amdt. 7 (part), Amdt. 6 §§ 3, 4 and Amdt. 4 with Ord. 97-796 § 2 (part), 1997)

6.54.150 Revocation or suspension of license/permit.

A. The board shall revoke a license for any of the following reasons:

1. Discovery that false or misleading information or data was given on an application, or material facts were omitted from an application. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application;

2. The licensee was or has become ineligible to obtain a license under Section 6.54.050(B);

3. Any cost or fee required to be paid by this chapter is not paid;

4. The licensee knowingly employs, or with due diligence should have known that licensee was employing, an entertainer who does not have a permit. The licensee knowingly provides, or with the exercise of due diligence should have known the he/she was providing, space on the premises whether by lease or otherwise to an independent contractor who performs or works as an entertainer without a permit;

5. The licensee sells, furnishes, gives, displays, or causes to be sold, furnished, given or displayed to any minor any sexually oriented entertainment or sexually oriented material on the licensed premises. The licensee

knowingly allows, or thorough the exercise of due diligence should have been able to prevent, the licensee's employee, who is on the premises furthering the business of the licensee, from selling, furnishing, giving, displaying, or causing to be sold, furnished, given or displayed to any minor any sexually oriented entertainment or sexually oriented material on the licensed premises.

The licensee knowingly allows, or thorough the exercise of due diligence should have been able to prevent, an entertainer to sell, furnish, give, display, or cause to be sold, furnished, given or displayed to any minor any sexually oriented entertainment or sexually oriented material on the licensed premises;

6. The licensee knowingly denies, or thorough the exercise of due diligence should have known that he/she was denying, access to law enforcement personnel during business hours to any portion of the licensed premises wherein sexually oriented entertainment is permitted or to any portion of the licensed premises wherein sexually oriented material is displayed or sold.

The licensee knowingly allows, or thorough the exercise of due diligence should have been able to prevent, his/her employee, who is on the premises furthering the business of the licensee, to deny access to law enforcement personnel during business hours to any portion of the licensed premises wherein sexually oriented entertainment is permitted or to any portion of the licensed premises wherein sexually oriented material is displayed or sold.

The licensee knowingly allows, or thorough the exercise of due diligence should have been able to prevent an entertainer to deny access to law enforcement personnel during business hours to any portion of the licensed premises wherein sexually oriented entertainment is permitted or to any portion of the licensed premises wherein sexually oriented material is displayed or sold;

7. The attempted transfer of a license or any interest in a license;

8. If an application for a license or a renewal of a license was denied and that administrative denial was appealed and upheld by a court after adjudication on the merits then that license shall be revoked on the effective date of the court's judgement.

9. The licensee fails to maintain the licensed premises in a sanitary and safe condition by allowing continuing violations of Chapter 6.54.

A continuing violation shall mean more than two judgements from the board, unless the decision of the board is appealed and overturned, that the licensee violated Chapter 6.54 within a twenty-four-month period, not including any period of suspension. The fact that the board's judgment is being appealed shall have no affect on the determination that the violation has been continuing until such time as the judgment of the board is reversed.

The licensee may affirmatively prove as a defense to an alleged violation of Chapter 6.54 that the licensee did not know, or through the exercise of due diligence could not have known that his/her employees' acts or an entertainer's acts would violate Chapter 6.54. If the licensee knew or should have known that his/her employees' acts or an entertainer's acts were violating any subsection of Chapter 6.54, the licensee may still affirmatively prove as a defense to the violation that the licensee was powerless to prevent the continuing unsafe or unsanitary condition.

10. Continuous Violations of Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030. Continuous violations shall mean that the licensee had more than two judgements entered against him/her for violating Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 within a twenty-four month period, not including periods of suspension. The fact that the trial court's judgement is being appealed shall have no effect on the revocation until such time as the judgement of the trial court is reversed.

B. The board shall either fine, suspend or fine and suspend a license for any of the following reasons, that are not sufficient grounds for revocation:

1. The licensee fails to maintain the licensed premises in a sanitary or safe condition by allowing a violation of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030.

The licensee may affirmatively prove as a defense to an alleged violation of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 that he/she did not know, or through the exercise of due diligence could not have known of his/her employee's acts or omissions or an entertainer's act or omissions. If the licensee knew or should have known that his/her employee or an entertainer was violating any such subsection of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030, the licensee may still affirmatively prove as a defense to the alleged violation that he/she was powerless to prevent the unsafe or unsanitary condition.

2. Upon the first violation of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 within a twenty-four-month period, not including periods of suspensions, the licensee shall either be fined five hundred dollars or his/her license shall be suspended for a period no less than five days and no longer than thirty days or the licensee shall be both fined five hundred dollars and his or her license suspended for a period of not less than five days and no longer than thirty days.

3. Upon the second violation of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 within a twenty-four-month period, not including periods of suspensions, the license shall be suspended no less than thirty-one days and no longer than ninety days.

A second violation of Chapter 6.54, shall mean a prior judgement from the board, unless the decision of the board is appealed and overturned, that the licensee violated Chapter 6.54 within a twenty-four-month period, not including any period of suspension. The fact that the board's judgment is being appealed shall have no affect on the determination that the violation occurred previously until such time as the judgment of the board is reversed.

A second violation of Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 shall mean a judgment from a trial court that the license violated Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030. The fact that a trial court's judgment is being appealed shall have no affect on the suspension and the judgment shall be treated as a violation until such time as the judgment of the trial court is reversed.

C. The board shall revoke a permit for any of the following reasons:

1. Discovery that false or misleading information or data was given on any application, or material facts were omitted from any application. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application;

2. The permittee has become ineligible to obtain a permit under Section 6.54.080A;

3. Any cost or fee required to be paid by this chapter is not paid;

4. The permittee provides sexually oriented entertainment on the premises of an operator who he/she knows, or with the exercise of due diligence should have known, does not have a license;

5. The permittee knowingly, or with the exercise of due diligence should have known that he/she, sells, furnishes, gives, displays, or causes to be sold, furnished, given or displayed to any minor any sexually oriented entertainment or sexually oriented material on the premises;

6. The permittee knowingly denies, or through the exercise of due diligence should have known that he/she was denying, access to law enforcement personnel during business hours to any portion of the licensed premises wherein sexually oriented entertainment is permitted or to any portion of the licensed premises wherein sexually oriented material is displayed or sold;

7. The permittee attempted to transfer his/her permit or any interest in his/her permit to someone else;

8. The application for a permit or the application for the renewal of a permit was denied and that administrative denial was appealed and upheld by a court after adjudication on the merits;

9. The permittee repeatedly fails to comply with the provisions of Chapter 6.54. Repeatedly fails to comply shall mean that the permittee has been found by the board to have violated Chapter 6.54 more than twice within a period of twenty-four months, not including any period of suspension. The fact that the board's judgment is being appealed shall have no affect on the determination that the permittee has repeatedly failed to comply until such time as the judgment of the board is reversed.

D. The board shall suspend a permit for any of the following reasons that are not grounds for revocation:

1. The permittee violates Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030.

2. Upon the first violation of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 within a twenty-four-month period, not including periods of suspensions, the permittee shall either be fined five hundred dollars or his or her permit shall be suspended for a period no less than five days and no longer than thirty days or the permittee shall be both fined five hundred dollars and his or her permit suspended for a period of no less than five days and no longer than thirty days.

Upon the second violation of Chapter 6.54, Tennessee Code Annotated Section 57-4-204 or Metropolitan Code Section 7.24.030 within a twenty-four-month period, not including periods of suspensions, the permit shall be suspended no less than thirty-one days and no longer than ninety days.

E. The board shall follow the following procedure for revoking or suspending a license or a permit.

1. Before revoking or suspending any license or permit the board shall give the operator or entertainer five days' written notice of the alleged violation(s) against him/her. In such cases the charges shall be specific and in writing except under Section 6.54.150(A)(7), (8) and Section 6.54.150(C)(7), (8) of this chapter.

2. The board shall hear all the evidence pertaining to the revocation or suspension at the next regular meeting. The next meeting shall be held no later than fifteen days after the notice described above is mailed. The licensee/permittee may present evidence bearing upon the question of suspension/revocation.

3. If the licensee/permittee fails to appear at the hearing before the board he/she will have waived the right

to present evidence to the board on the citation. Failing to appear before the board will not preclude the licensee's/permittee's right to appeal any revocation/suspension to the chancery court of Davidson County.

4. If the licensee/permittee requests a hearing, the license/permit shall remain in effect and valid during the appeal to the board until such time as the hearing is held.

5. Any adverse administrative decision to suspend or revoke a license/permit that is appealed to the circuit or chancery courts of Davidson County shall not take effect until that administrative decision has been upheld by the court after adjudication on the merits. Adverse decisions of the board which are not appealed shall not take effect for sixty days from the date of the decision to allow the affected party time to seek judicial review.

6. The revocation/suspension of a license/permit may be appealed to the circuit or chancery courts of Davidson County by the licensee/permittee. The metropolitan department of law may initiate proceedings for a declaratory judgment in the circuit or chancery court for Davidson County. If the permittee/licensee chooses to appeal by filing a petition for a writ of certiorari, then the metropolitan government shall file the record of all proceedings with the court within seven days from the grant of the writ of certiorari.

F. Any operator or entertainer whose license or permit is revoked shall not be eligible to receive a license or permit for one year from the date of revocation. (Amdt. 1 §§ 11-13 with Ord. 99-1503 § 88, 1999)

6.54.160 Penalties and prosecutions.

A. Any individual, partnership or corporation violating any of the provisions of this chapter shall be subject to any of the following penalties:

1. Five hundred dollars for each offense; and/or

2. A suspension of any license/permit for a specified period of time for each offense listed in Section 6.54.150B or D; or

3. Revocation of any license/permit for any conduct listed in Section 6.54.150A or C.

B. The penalty of suspension may not be combined with revocation. The five-hundred dollar penalty alone can be a penalty or it may be combined with a suspension.

C. Each violation of this chapter shall be considered a separate offense and any continuing violation shall be considered a separate offense for each day of the violation. (Ord. 99-1814 § 51, 1999; Ord. 99-1503 §§ 89, 90, 1999; Ord. 97-1022 § 63 (part), 1997; Ord. 97-796 § 2 (part), 1997)

6.54.170 Invalidity of part.

Should any court of competent jurisdiction declare any section, clause or provision of this chapter to be unconstitutional, or any other ordinance of the metropolitan government unconstitutional, such decision shall affect only such section, clause, provision or ordinance so declared unconstitutional, and shall not affect any other section, clause or provision of this chapter. (Ord. 97-1022 § 63 (part), 1997; Ord. 97-796 § 2 (part), 1997)

Chapter 6.56

POOLROOMS AND BILLIARD PARLORS

Sections:

6.56.010 Prohibited hours of operation.

6.56.010 Prohibited hours of operation.

All poolrooms and billiard parlors shall be closed from twelve midnight to six a.m. (Prior code § 29-1-48)

Chapter 6.60

RENDERING PLANTS

Sections:

6.60.010 Definitions.
6.60.020 Permit required.
6.60.030 Construction, facilities and operation.
6.60.040 Premises maintenance.
6.60.050 Sanitary conditions.
6.60.060 Equipment and utensils.
6.60.070 Reuse of containers.
6.60.080 Vehicles.
6.60.090 Handling diseased carcasses.
6.60.100 Reduction of animal matter.
6.60.110 Prohibited discharges.
6.60.120 Inspection authority—Right of entry.

6.60.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Air pollution" means the presence in the outdoor atmosphere of one or more contaminants in quantities or characteristics and of duration such as to be injurious to human, plant or animal life or to property, or which unrea-

sonably interfere with the comfortable enjoyment of life and property.

"Contaminants" means any extraneous material, such as, but not necessarily limited to, dust, fumes, gas, mist, odor, smoke, vapor or any combination thereof.

"Employee" means any person who handles inedible portions of animals or fowl for rendering purposes, or who is engaged in the rendering process, or who handles or transports materials or products thereof, or who is employed in a room in which any part of the rendering operation takes place.

"Equipment and utensils" means knives, cleavers, choppers, grinders, presses, cookers, conveyors, drums, washers, containers or other implements or vehicles used in the rendering process or in the storage and transportation of materials and products.

"Offal" means the inedible portions of animals, fish or poultry handled in an abattoir or rendering plant. This term includes tankage from rendering operations, hair, horn and hoof shells, bones, paunch contents, manure and similar material.

"Reduction" means any heating process, including rendering, cooking, drying, dehydrating, digesting, evaporating and protein concentrating.

"Rendering plant" means any establishment producing grease, tallow, meat and bone meal byproducts, either in cake or ground form, feather meal or tankage from the inedible portion of animals or fowl, or processing in whole or in part dead stock, heads, bones, blood, offal, butcher shop fats, packing house material, meat trimmings, used grease or any other nonedible portions of animals or fowl for protein fats or other products designated for commercial use. (Prior code § 20-1-202)

6.60.020 Permit required.

Any person desiring to construct, establish, conduct or maintain any plant in the metropolitan government area for the purpose of rendering shall first obtain a permit from the department of health. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit. Upon violation of any of the provisions of this chapter by any permit holder, the chief medical director may suspend his permit for a period not exceeding forty-five days, and the board of health may revoke his permit permanently for serious or repeated violations. The holder of a permit shall be notified in writing by registered mail of the suspension of his permit, and no permit shall be revoked until the holder thereof is provided the opportunity for a hearing before the board of health. (Prior code § 20-1-203)

6.60.030 Construction, facilities and operation.

In the issuance of any permit under this chapter, the following requirements in plant construction, facilities and operation shall be observed:

A. Floors. All floors or processing and storage rooms shall be constructed of smooth concrete or other material of equal or less porosity. The surface shall be free of cracks, holes or raised surfaces and graded to provide sufficient drainage to a common drain, and shall be maintained in a sanitary condition and state of good repair.

B. Walls, Partitions and Ceilings. Ceilings, partitions and posts shall be of cleanable construction, and shall be cleaned and kept in a sanitary condition.

C. Doors and Windows. Openings into all plant rooms shall be effectively protected against the entrance of rodents, insects and other vermin.

D. Lighting and Ventilation. Rendering plants shall be well lighted and adequately ventilated. Lighting in plants shall be sufficient to provide not less than twenty footcandles on all working surfaces and working areas. Where necessary, adequate ventilation shall be provided.

E. Plumbing. There shall be an efficient drainage and plumbing system for the rendering plant and premises. All plumbing shall be installed in compliance with the metropolitan plumbing code.

F. Waste Disposal. The sewage system shall be adequate and have capacity to readily remove all wastes in an approved manner so that health hazards or nuisances will be prevented.

G. Water Supply—Generally. The water supply shall be ample, clean and potable, with adequate pressure, but not less than forty pounds per square inch, and there shall be adequate facilities for distributing the water and for protecting the water supply against contamination and pollution. Hose connections with steam and water mixing valves or hot water hose connections shall be provided at convenient locations throughout the plant for cleaning purposes, and the temperature of the hot water shall be maintained at not less than one hundred eighty degrees Fahrenheit.

H. Water Supply—Nonpotable Water. Nonpotable water is permitted only in those parts of the plant where no product is handled or prepared, and then only for limited purposes, such as on condensers not connected with the potable water supply, in vapor lines serving inedible products and rendering tanks. Nonpotable water lines shall be clearly identified and shall not be cross-connected with potable water supply lines.

I. Toilet and Lavatory Facilities.

1. Water closets conveniently located shall be provided for each sex according to the following table, based

on the maximum number of persons of that sex employed at any one time:

Number of Persons	Minimum Number of Facilities
1—9	1
10—24	2
25—49	3
50—74	4
75—100	5
Over 1001 for each additional 30 persons	

2. Wherever urinals are provided, a maximum of one-third of the number of facilities specified in the preceding table may be replaced by an equal number of urinals. Two feet of porcelain enamel urinal may be considered equivalent to one urinal facility.

3. Handwashing facilities shall be provided in or near the employee toilet and dressing rooms. Lavatories shall be supplied with hot and cold water under pressure. Soap or other detergents dispensed through an approved dispenser, and sanitary means for drying hands shall be located in or near employee toilet and dressing rooms.

4. The use of a common towel is prohibited.

5. At least one lavatory shall be provided for each twenty employees up to one hundred employees, and one for each twenty-five employees above one hundred employees. (Prior code § 20-1-204)

6.60.040 Premises maintenance.

The premises within and surrounding rendering plants shall be kept clean and free of litter at all times and shall be well drained and maintained so that there are no pools of standing water. Spillage and waste material shall be collected promptly and removed from the premises. Loading areas and ramps shall be paved and kept clean, well drained and free of vermin. (Prior code § 20-1-205)

6.60.050 Sanitary conditions.

Rooms, compartments, places, equipment and utensils used for preparing, storing or otherwise handling inedible material and all other parts of the rendering plant shall be kept clean and sanitary. (Prior code § 20-1-207)

6.60.060 Equipment and utensils.

Equipment and utensils used for preparing, processing or otherwise handling inedible material shall be of such material and so constructed as to permit them to be easily and thoroughly cleaned. (Prior code § 20-1-206)

6.60.070 Reuse of containers.

Secondhand tubs, barrels or drums intended for reuse as containers of inedible material shall be of metal and shall be inspected when received at the rendering plant for leaks and broken seams. Those showing evidence of leaks or broken seams may be used only for dry material. Reuse of containers shall be allowed only after thorough washing and steam cleaning. (Prior code § 20-1-210)

6.60.080 Vehicles.

A. Any vehicles transporting meat scraps, bones, offal, fowl feathers, butcher shop fats, packinghouse material, hides, blood, heads, grease and trimmings designated as inedible material shall be easily cleanable, of impervious construction and completely enclosed.

B. Dead animals may be transported in open trucks; provided, that the truck body shall be leakproof to a side wall depth of at least twelve inches. The truck body shall be constructed with steel decks, sides and front-end walls, and there shall be provided a raised steel rim of adequate height to prevent any spillage from the rear end. When actually transporting dead animals on roads, streets and highways, the truck body shall be covered with a tarpaulin or other heavy canvas cover. Such trucks shall be covered immediately upon loading and be kept covered until emptied, and then shall be cleaned and disinfected.

C. All vehicles transporting items included under subsections A and B of this section shall be thoroughly cleaned and disinfected after each day's use, on a surfaced area properly drained. All owners and operators, including private individuals using vehicles for the transportation of inedible material or dead stock to or from rendering plants, shall be responsible for compliance with the provisions of this section.

D. The transportation of inedible products in vehicles designated for edible products and the transporting of edible products in vehicles designated for inedible products is prohibited. (Prior code § 20-1-209)

6.60.090 Handling diseased carcasses.

A. All persons who dress or handle diseased carcasses or parts thereof shall cleanse their hands of grease, wash them thoroughly, rinse them in clean water and immerse them in a disinfectant solution at the completion of such operation.

B. All utensils, equipment and implements used in dressing or handling diseased carcasses shall be thoroughly cleaned and disinfected at the completion of such operation. (Prior code § 20-1-208)

6.60.100 Reduction of animal matter.

No person shall operate or use any article, machine, equipment or other contrivance for the reduction of animal matter unless all gases, vapors and gas-entrained effluents from such an article, machine, equipment or other contrivance are:

A. Incinerated at temperature of not less than one thousand two hundred degrees Fahrenheit for a period of not less than 0.3 seconds; or

B. Processed in a manner determined by the chief medical director to be equally or more effective for the purpose of air pollution control than that specified in subsection A of this section. (Prior code § 20-1-212)

6.60.110 Prohibited discharges.

No person shall discharge into the atmosphere from any source whatsoever such quantities of contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health or safety of any such person or the public, or which cause or have a natural tendency to cause injury or damage to business or property. (Prior code § 20-1-211)

6.60.120 Inspection authority—Right of entry.

The chief medical director or his authorized representative is authorized to conduct such inspections as he deems necessary to ensure compliance with all provisions of this chapter, and shall have right of entry at any reasonable hour to the rendering plant or premises for this purpose. (Prior code § 20-1-213)

Chapter 6.64

SOLICITATIONS

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Article I. Commercial Solicitors

6.64.010 Permit required—Exceptions—Violation and penalty.

A. Before any salesman, solicitor or representative engaged in obtaining orders or making sales directly to the consumer or user of goods, wares or merchandise to be delivered immediately or in the future, shall solicit such orders or make such sales in the general services district, he shall obtain a solicitor's permit; provided, that subscriptions to papers or magazines shall be regarded as within the definition of goods, wares, or merchandise.

B. The provisions of this section shall not apply to charitable solicitations or to persons engaged in the sale of daily newspapers and food products. Further, the provisions of this section shall apply only to those persons engaged in door-to-door sales in predominantly residential areas.

C. Violations of the provisions of this section is hereby declared to be a misdemeanor and punishable as provided in Section 1.01.030 of this code. (Ord. 95-1329 § 2 (part), 1995; prior code § 37-1-1)

6.64.020 Permit—Application.

Any person subject to the provisions of this article shall file a written application for a permit with the metropolitan police department, which application shall state:

A. The name, age and residence of the applicant;

B. The name and address of the person represented by him;

C. Sufficient facts to show the financial responsibility of the principal;

D. The hours and location where the applicant will be soliciting;

E. Evidence of the authority of the applicant and the extent thereof;

F. The kind, character and prices of the goods, wares and merchandise to be offered to the consumer; and

G. A copy of the contract used in obtaining orders or making sales.

In addition to the information contained in the application required, the person seeking a permit shall provide a current photograph of the applicant. (Ord. 96-527 § 1, 1996; prior code § 37-1-2)

6.64.030 Permit—Fee amount and disposition—Expiration.

Upon approval by the metropolitan police department of the application, the applicant shall pay a fee of twenty dollars for each person who shall solicit within the area of metropolitan government to the metropolitan police department. All funds received by the metropolitan police department shall be deposited in the general fund of the general services district. The police department shall make a proper notation on the application that the fee has been paid, and the applicant shall take a copy of the application, together with a current photograph, to the metropolitan clerk, who shall issue the permit which shall include a current photograph of the solicitor. All permits issued under the provisions of this section shall expire one year from the date of issuance. (Ord. 96-527 § 2, 1996)

6.64.040 Permit—Prohibited when—Bond required when.

A. The metropolitan police department shall refuse to issue a permit if:

1. An investigation reveals the financial responsibility of the principal is questionable;

2. There is no proof as to the authority of the agents to represent the principal;

3. The location and time of solicitation would endanger the safety and welfare of the solicitors or their customers or users; or

4. The applicant falsified any information on the application.

B. Where the applicant is rejected because the financial responsibility of his principal is questioned, he may obtain a permit upon executing a surety bond in the sum of five thousand dollars to insure to the benefit of any person who may suffer any loss by reason of any order or sale made by the applicant.

C. The bond shall be deposited with the metropolitan clerk. (Prior code § 37-1-4)

6.64.050 Permit—Display upon demand.

Any person who has obtained a permit under this article shall display such permit on their person at all times when making a sale, obtaining an order from any person, or engaging in commercial solicitation in any manner, and shall exhibit such permit to any police officer whenever requested by such officer. (Ord. 96-527 § 3, 1996)

6.64.060 Permit—Cancellation and revocation.

The metropolitan police department shall cancel any permit issued under the provisions of this article upon conviction of the salesman, solicitor or representative of any offense of the metropolitan government or the laws of the state of Tennessee related to the sale of goods, wares or merchandise. Further, the violation of any condition of the permit, failure to display a permit upon demand by a metropolitan police officer or falsifying information on the application for a permit shall be grounds for revocation of the permit. (Prior code § 37-1-6)

Article II. Charitable Solicitations

6.64.070 Definitions.

Terms used in this article shall be defined as follows, unless a different meaning clearly applies from the context:

"Area of metropolitan government" means and includes the total area of Davidson County, as defined in Section 1.02 of the Metropolitan Charter.

"Board" means the solicitations board as created in Section 6.64.080.

"Charitable organization" means a group which is or holds itself out to be a benevolent, patriotic, philanthropic, social service, welfare, eleemosynary, civic or fraternal organization, either actual or purported, or any person who solicits or obtains contributions soliciting from the public for charitable purposes.

"Charitable purpose" means any purpose which is benevolent, patriotic, philanthropic, social service, welfare, eleemosynary, civic, environmental or fraternal, either actual or purported.

"Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

"Contributions" means and includes the words alms, food, clothing, money, subscriptions, property or donations under the guise of a loan of money or property.

"Director" means the metropolitan clerk of the metropolitan government, or the clerk's designee.

"Gross revenues" means the total amount of revenue received by an organization, including any fee or commission paid to a person or organization for soliciting funds from the proceeds of the solicitation. It shall also include pledges, whether received or not, made during a solicitation.

"Metropolitan government" means the metropolitan government of Nashville and Davidson County.

"Person" means any individual, firm, copartnership, corporation, company, association or joining stock association, church, religious sect, religious denomination, society, organization or league, and includes any trustee, receiver, assignee, agent or other similar representative thereof.

"Professional solicitor" means any person who, for financial or other consideration, solicits contributions for or on behalf of a charitable organization, whether such solicitation is performed personally or through his agents, servants or employees, or through agents, servants or employees specifically employed by or for a charitable organization who are engaged in the solicitation of contributions under the direction of such person; or a person who plans, conducts, manages, carries on or advises a charitable organization in connection with the solicitation of contributions. A salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a "professional solicitor." However, any salaried officer or employee of a charitable organization that engages in the solicitation of contributions for compensation in any manner for more than one charitable organization shall be deemed a "professional solicitor."

"Public" means and includes the whole community of citizens residing or working within the area of the metropolitan government, with no limitation or restriction to any particular class within such community.

"Solicit" and "solicitation" means the request directly or indirectly for money, credit, property, financial assistance, or other items of value which will be used for charitable or religious purposes as those purposes are defined in this article. These words shall also mean and include the following methods of securing money, credit, property, financial assistance, or other things of value on the plea or representation that it will be used for a charitable or religious purpose as herein defined.

1. Any oral or written request;

2. The distribution, circulation, mailing or posting of any handbill, written advertisement or publication;

3. The making of any announcement either over the radio or television or by any public media, telephone or telegraph concerning an appeal, assemblage, athletic or sports event, bazaar, benefit, fund-raising campaign, contest, dance, drive, entertainment, exhibition, exposition, party, performance, picnic, sale or social or religious gathering, which the public is requested to patronize, support or make any gift, donation or contribution for any charitable or religious purpose connected therewith;

4. The sale of or offer or attempt to sell, any advertisement, advertising space, book, card, chance, coupon, device, magazine, membership, new or used merchandise, subscription, ticket or other thing in connection with which any appeal is made for any charitable or religious purpose, or where the name of the charitable or religious purpose is used or referred to directly or indirectly in any such appeal as an inducement or reason for making any such sale, or when or where in connection with any such sale, any statement is made that the whole or any part of the proceeds from any such sale will be donated to any charitable or religious purpose.

A "solicitation," as defined in this section, shall be deemed completed when made, regardless of whether or not the person making the solicitation actually receives any contribution or makes any sale referred to in this section as a result of having made such solicitation. (Ord. 92-242 § 1, 1992; Ord. 89-1091 § 1, 1990; prior code § 37-1-16)

6.64.080 Solicitations board.

A. There is created a solicitations board which shall consist of nine citizens of the area of the metropolitan government appointed by the mayor and submitted for approval by a majority of the whole membership of the metropolitan council and one of whom shall be a representative from each of the following organizations:

1. Nashville area chamber of commerce;
2. Greater Nashville Better Business Bureau, Inc.;
3. Council of community services;
4. A Nashville church or synagogue;
5. Trades and labor council;
6. A volunteer health agency;
7. Social service agency;
8. Civic groups.

B. The members of this board shall serve without remuneration, and any member thereof may be removed by the mayor with the approval of the metropolitan county council. The board shall designate one member to serve as chairman, who shall serve as chairman for a period of one year. The board shall also designate one member who shall serve as vice-chairman and one member to serve as secretary, all of whom shall serve for a period of one calendar year.

C. The chairman of the board, or vice-chairman in the absence of the chairman, shall have the responsibility to call meetings as is necessary to conduct the business of

the board, but the board shall meet at least monthly. It may have additional meetings upon the call of the chairman. Five members shall constitute a quorum, and any action taken at any regular or special meeting of the board with a quorum present shall be effective.

D. The members of the present board as appointed by the mayor and confirmed by the metropolitan council under Substitute Ordinance 78-1022, as amended, shall retain their appointments until such time as either their original appointments or any reappointments made under such prior ordinance would naturally expire. The original appointments and/or reappointments for members of the board to be made under this article from the chamber of commerce, the better business bureau and the council of community services shall be for a term of one year. The original appointments and/or reappointments to be made under this article for members of the board from a Nashville church or synagogue, the trades and labor council, and a voluntary health agency shall be for a term of two years. The remaining members of the board shall serve a term of three years from the date of the original appointments under this article. At least one member of the board shall be a certified public accountant or licensed public accountant.

E. The board shall have the following powers:

1. To approve or refuse permits, and in the event of a refusal to file a written report explaining the reason for such refusal;

2. To require applications to be filed in all cases required herein;

3. To compel payment of fees prescribed for permits and to receive same;

4. To do all things necessarily incident to securing of all permits, applications, certificates, registrations and other forms required herein;

5. To hold hearings as required herein;

6. To revoke permits as stated herein;

7. To publish reports and give any and all publicity to information received by it;

8. To have access to and inspect books, records, papers and facilities of applicants or of anyone making solicitations in the area of metropolitan government;

9. To investigate the methods of making any solicitations, or to delegate this investigatory power to any person specifically approved by the board to make such investigation;

10. To issue requisite certificates;

11. To determine in all cases where questions arise, if specific items in any applicant's fundraising solicitation program should properly be designated as campaign costs and supplemental expenses. Uniform accounting practices in accordance with the standards for accounting and financial reporting for voluntary health and welfare organizations will be mandatory;

12. To conduct investigations, to hold hearings, to compel the attendance of witnesses and the production of books, papers and records pertinent to the investigation or hearing, and to administer oaths to witnesses. If any person fails or refuses to obey a reasonable order for attendance or for the production of books and papers, the board is authorized to apply to the chancery court for an order requiring that the order of the board be obeyed. (Prior code § 37-1-17)

6.64.090 Director.

The metropolitan clerk of the metropolitan government, or the clerk's designee, shall serve as director of the charitable solicitations board. The metropolitan clerk, or the clerk's designee, shall meet with the board at all regular and special meetings. It shall be the duty of the director to assist the board in the administrative details of the duties imposed upon the board. The director shall secure and maintain all forms necessary for the execution of the provisions of this article and the work of the board. All such forms shall be approved by the board prior to use. The director shall keep records pertaining to the work of the board. The director shall not receive compensation for the services rendered the board and the director shall furnish the board with whatever other administrative services the board requires. (Ord. 92-242 § 2, 1992)

6.64.100 Permit required—Exceptions.

A. No person shall solicit contributions for any charitable purpose within the area of the metropolitan government without a permit from the board authorizing such solicitation, or without first submitting a sworn affidavit as described in subsection B of this section.

B. In all charitable solicitations where the anticipated annual gross revenues from solicitations do not exceed five thousand dollars, the person, group or organization is not required to obtain a charitable solicitations permit. Such person, group or organization, before soliciting any funds, must file an affidavit with the director stating that less than five thousand dollars will be collected annually. Such application shall contain the name of the organization soliciting the funds, the purposes for which the funds are being solicited, and the method of solicitation. The affidavit will contain the dates from which the solicitations will be conducted and, within sixty days after the closing date of solicitation on the application, another affidavit will be filed reporting the total amount of the funds contributed to the solicitation and how such funds were disbursed. If at any time during twelve consecutive months the total solicitations for any one or more solicitations to-

tals more than five thousand dollars, the person, group or organization shall be required to file a report pursuant to Section 6.64.190.

C. The provisions of this article regarding applications for a permit and the filing of a financial report shall not apply to:

1. Educational institutions, the curricula of which in whole or in part are registered or approved by the Department of Education, either directly or by acceptance of accreditation by an accrediting body recognized by the Department of Education; provided, that such educational institutions simultaneously file with the Secretary of State, duplicates of such annual fiscal reports as are filed with the Department of Education or other accrediting agency.

"Educational institution," for the purpose of this section, means an organization organized and operated exclusively for educational purposes and which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on, and which is accredited by a recognized accrediting agency. The term "educational institution" also includes private foundations soliciting contributions exclusively for such organizations;

2. Organizations which solicit only within the membership of the organizations by members thereof. The term "membership" does not include those persons who are granted a membership upon making a contribution as a result of solicitation;

3. Religious organizations. (Ord. 89-1091 § 2, 1990; prior code § 37-1-19)

6.64.110 Application—Information required.

A. An application for a permit to solicit as provided by Section 6.64.100 shall be made to the board through the forms provided by the metropolitan government. Such application shall be sworn to and filed with the board at least fifteen days prior to the date of the regularly scheduled monthly board meeting; however, the board may for good cause shown allow the filing of an application less than fifteen days prior to the regularly scheduled date of the board meeting. The application herein required shall contain the following information, or in lieu thereof, a detailed statement of the reason or reasons such information cannot be furnished:

1. The name, address or headquarters of the person applying for the permit;

2. If the applicant is not an individual, the names and addresses of the applicant's principal officers and managers, and a copy of the resolution, if any, authorizing such solicitation, certified as a true and correct copy of the original by the officer having charge of the applicant's records;

3. The purpose for which such solicitation is to be made, the total amount of funds proposed to be raised thereby, and the use or disposition to be made of any receipts therefrom;

4. A specific statement, supported by reasons and, if available, figures showing the need for the contributions to be solicited;

5. The names and addresses of the person or persons who have authority to disburse funds;

6. The name and address of the person or persons who will be in direct charge of conducting the solicitation and the names of all professional solicitors connected or to be connected with the proposed solicitation;

7. An outline of the method or methods to be used in conducting the solicitation;

8. The time when such solicitation shall be made, giving the preferred dates for the beginning and ending of such solicitation;

9. The estimated cost of the solicitation relative to such solicitation which shall include, but not be limited to:

a. Printing,

b. Telephone,

c. Mail,

d. Rental fees,

e. Professional entertainment,

f. Any and all related expenses;

10. The amount of any wages, fees, commissions, expense or emoluments to be expended or paid to any person in connection with such solicitation, and the names and addresses of all such persons;

11. a. A financial statement shall be required from every applicant who has previously been issued a permit by the board, setting forth the amount of all funds collected for charitable purposes in the preceding fiscal or calendar year. The financial statement shall give the amount of money raised, together with a detailed breakdown of the cost of raising it, and final distribution.

b. The requirements for financial data submitted pursuant to this subdivision are as follows:

i. For gross solicitations of less than twenty-five thousand dollars, a properly completed Form 990 must be submitted. This return should be prepared by a certified public accountant or other qualified paid preparer. In the event the return is prepared by an employee, officer or director of the organization, additional financial information such as compiled financial statements may be required at the discretion of the charitable solicitations board,

ii. Gross solicitations of twenty-five thousand dollars and up to seventy-five thousand dollars shall require a

compilation of the financial statements with full disclosures,

iii. Gross solicitations of more than seventy-five thousand dollars and up to two hundred thousand dollars shall require reviewed financial statements,

iv. Gross solicitations of more than two hundred thousand dollars shall require audited financial statements,

c. Disclosed within the financial statements shall be actual funds raised from public support through solicitation efforts and the fundraising cost associated with those efforts. (This disclosure can be made within the financial statements or by footnote disclosure.) The terms "compilation," "review" and "audit" shall be interpreted as defined by the American Institute of Certified Public Accountants. Such compilations, reviews and audits shall be prepared in accordance with generally accepted accounting principles and comply with those standards applicable to nonprofit organizations. The required financial statements shall be prepared by a certified public accountant or a licensed public accountant;

12. A full statement of the character and extent of the charitable work being done by the applicant within the area of the metropolitan government;

13. The ratio, expressed as a percentage, of the estimated cost and personnel expense of the solicitation, disclosed in accordance with subdivisions 9 and 10 of this subsection, to the gross revenues projected to be derived from the solicitation, as disclosed in accordance with subdivision 3 of this subsection;

14. A written statement shall be required from every applicant who provides, in exchange for a donation of money, a service or item whose cost is to be paid out of solicited funds. The statement shall indicate the percentage or proportionate amount of the donation which is tax deductible by the patron and shall be provided to the patron immediately upon receipt of the donation. The amount which is tax deductible shall be the proportionate amount which will be expended solely for charitable purposes;

15. A statement to the effect that if a permit is granted, it will not be used or represented in any way as an endorsement by the metropolitan government, or by any department or officer thereof;

16. The names and street addresses and telephone numbers of all members of the board of directors of the applicant;

17. Such other information as may reasonably be required by the board in order for it to determine the kind and character of the proposed solicitation, and whether such solicitation is in the interest of, and not inimical to, the public welfare;

18. Should the organization desire to sell new or used merchandise to the public to raise funds for the organization, a statement of the percentage of the gross revenues of the sale to be used for the charitable purpose for which the solicitation is made, as stated in subdivision 3 of this subsection. Should the organization desire to sell used or donated merchandise to the public to raise funds for the organization, a statement must be made that minimum of at least fifty percent of the gross revenues of the sale of the used donated merchandise will be expended for the purpose for which the solicitation is made, as stated in subdivision 3 of this subsection;

19. Each application should contain proof of registration with the Secretary of State, as required under the Charitable Solicitations Reform Act of 1989, unless the applicant is exempt from registering with the state. If the state registration of any applicant is revoked or suspended, for any reason, the applicant must report such revocation or suspension to the board within thirty days. When a charitable solicitation permit has previously been granted to the applicant pursuant to this article, the permit is subject to review and potential revocation by the board;

20. The applicant shall provide the dates of the fiscal year of the applicant;

21. a. The applicant or representative of the applicant shall appear before the board at the time of the hearing on the application in order to answer any questions which the board may wish to ask. Failure to appear at the scheduled hearing of the application will result in deferral of the application until the next regularly scheduled meeting of the board. Failure of the applicant or representative to appear for a hearing after deferral will result in denial of the application unless, for good cause, the applicant requests and is granted a continuance by the board. Upon denial of an application, the application fee shall be forfeited. The director shall notify the applicant by U. S. mail of the action of the board.

b. The charitable solicitations board may waive the personal appearance requirement of subsection (A)(21)(a) of this section and approve the applicant's permit application by a majority vote of the board. The charitable solicitations board may adopt alternative requirements for the personal appearance required in subsection (A)(21)(a) of this section including, but not limited to, a telephone conference or a written question procedure.

B. If, while any application is pending, or during the term of any permit granted thereon, there is any change of fact, policy or method that would alter the information given in the application, the applicant shall notify the board in writing thereof within twenty-four hours after such change.

C. Upon receipt of such information, whether submitted by the applicant or received through independent investigation, the board may require the applicant to ap-

pear before the board to explain such change of fact, policy or method. (Ord. 99-1795 § 1, 1999; Ord. 96-319 § 1, 1996; Ord. 89-1091 §§ 3—6, 1990; prior code § 37-1-20)

6.64.120 Application—Investigation by board—Compliance required.

A. The board shall examine all applications filed under Section 6.64.110 and shall make, or cause to be made, such further investigation of the application and the applicant as the board shall deem necessary in order for it to perform its duties under this article. Upon request by the board, the applicant shall make available for inspection all of the applicant's books, records and papers at any reasonable time before the application is granted during the pendency of the application before the board, during the time the permit is in effect, or after a permit has expired.

B. The director shall waive appearance before the board of any applicant who has been granted a permit for the five previous consecutive years upon submission by the applicant of an application containing all information required by Section 6.64.110; however, the board may, after inspection of the application at a meeting, require that the applicant appear before the board at a subsequent meeting as set forth in subsection (A)(21) of Section 6.64.110.

C. Upon learning of charitable solicitations within the metropolitan government for which a charitable solicitation permit has not been issued, the director shall notify, by certified mail, the person, group or organization conducting the solicitation that the requirements of this article have not been met. Such certified letter shall include an application for a charitable solicitations permit. Within five days of the return certified registration to the board, the person, group or organization shall submit a completed application to the board or an affidavit that fewer than five thousand dollars will be collected in this solicitation as provided in Section 6.64.100. (Prior code § 37-1-21)

6.64.130 Application—Findings of fact.

A. In determining whether the permit provided for in Section 6.64.100 should be granted or denied, the board shall consider the following factors:

1. Whether the charitable organizations and their professional solicitors, if any, have complied with all applicable ordinances of the metropolitan government;

2. The truthfulness of the statements made in the application;

3. The character and reputation for honesty and integrity of the applicant;

4. Provisions established by the applicant for control and supervision of the solicitation;

5. Whether the applicant has engaged in any fraudulent transaction or enterprise to the best of the board's knowledge, information and belief.

B. The director shall file in his office for public inspection and shall serve upon the applicant by mail a written statement of the board's findings of fact and its decision upon any application. (Ord. 89-1091 § 7, 1990: prior code § 37-1-22)

6.64.140 Permit—Fees.

Before a permit is issued, there shall be paid to the board a sum of fifty dollars as a permit fee if the projected funds to be raised as stated in the application exceed one hundred thousand dollars. If the projected funds to be raised as stated in the application are one hundred thousand dollars or less, there shall be paid to the board a sum of twenty-five dollars as an application fee before a permit is issued. A sum of fifteen dollars shall be paid to the board with all affidavits submitted pursuant to Section 6.64.100 (B) to cover expenses for processing same. (Prior code § 37-1-23)

6.64.150 Permit—Information required.

The permits issued under this article shall bear the name of the person whose signature appears on the application, the name and the address of the group or organization by whom the solicitation is to be made, the number of the permit, the date issued, the dates within which the permit holder may solicit, and a statement that the permit does not constitute an endorsement of the metropolitan government or by any of its departments, officers or employees, of the person, group or organization conducting the solicitation. All permits must be signed by the chairman of the board, or the vice-chairman in the absence of the chairman, or their designee. The permit is nontransferable. (Ord. 89-1091 § 8, 1990: prior code § 37-1-24)

6.64.160 Agents and solicitors.

A. No agent or solicitor shall solicit contributions for any charitable purpose for any person in the area of the metropolitan government unless such person has been granted a permit under the provisions of this article; provided, however, that such person may empower another organization to solicit on its behalf if the person furnishes the soliciting organization a statement in writing declaring that it knows of the proposed solicitation, authorizes the solicitation, and is expecting to receive a certain specific amount of proceeds from the solicitation. It is understood that the individual agents of any applicants are not required to have separate permits, but that the only permit required is the original permit issued to the person for whom the contributions are being solicited, or in the alter-

native, the applicant who has been authorized in writing to solicit funds for another organization as described above.

B. It shall be the duty of every charitable organization to furnish identification to persons who solicit contributions from the public on behalf of their organization. The solicitor shall be required to have and produce, or display on demand, identification indicating that the solicitor has been duly authorized by the organization for which he is soliciting. Such identification shall include, but not be limited to, the name of the holder of the identification and the name and number of the permit of the charitable organization.

C. No professional solicitor may solicit contributions for any charitable purpose until such time as the charitable organization for whose benefit the funds are being raised provides to the board a copy of the professional solicitor's state application and proof of state registration as described in Tennessee Code Annotated, Section 48-3-507.

D. No person shall, in connection with the solicitation of contributions for or the sale of goods for services of, a person other than a charitable organization, misrepresent to or mislead anyone by any manner, means, practice or device whatsoever, to believe that the person on whose benefit such solicitation or sale is being conducted is a charitable organization, or that the proceeds of such solicitation or sale will be used for charitable purposes, if such is not the fact.

E. A professional solicitor shall, prior to orally requesting a contribution, and at the same time at which a written request for a contribution is made, if a written confirmation of the pledge is utilized, clearly and conspicuously disclose at the point of solicitation his name as on file with the board, the name of any company or corporation for which he is an agent or employee and that such person or group is a "professional solicitor," who will receive as costs, expenses and fees a portion of the solicited funds raised through the solicitation campaign.

F. A professional solicitor, his agent, servant or employee shall disclose upon request by the solicitee the percentage of gross contributions raised by the professional solicitor which shall be received by the charitable organization after solicitation expenses, if known, or otherwise disclose the guaranteed minimum contract amount, which the charitable organization shall receive as a result of the solicitation campaign.

G. Any contract between a professional solicitor and a charitable organization shall be in writing and shall contain the names and addresses of the parties thereto. A fully executed copy shall be filed with the board within ten days after it is entered into or no later than the commencement of the solicitation.

H. If telephone solicitation is to be utilized by the charitable organization, a copy of the script that is intended to be used shall be provided to the board at the same time the application for a permit is filed. (Ord. 89-1091 § 9, 1990; prior code § 37-1-25)

6.64.170 Hearings.

A. Within five working days after receiving notification by certified mail that the application for a permit to solicit under this article has been denied, an applicant may file a written request for a public hearing on the application before the board, together with written exceptions to the findings of fact upon which the board based its denial of the application. Upon the filing of such a request, the board shall fix a time and a place for the hearing, and shall notify the applicant thereof.

B. The hearing shall be held within thirty days after the request is filed. At the hearing, the applicant may present evidence in support of his application and exceptions. Any interested persons may, in the discretion of the board, be allowed to participate in the hearing and present evidence in opposition to the applicant and exceptions.

C. Within thirty days after the conclusion of the hearing, the board shall render a written report either granting or denying the application for a permit. In this report, the board shall state the facts upon which its decision is based, and its ruling upon any exceptions filed on its original findings of fact upon the application. This report shall be filed in the director's office for public inspection, and a copy shall be served by certified mail upon the applicant and all parties to the hearing. (Prior code § 37-1-26)

6.64.180 Permit—Suspension and revocation.

A. Whenever it shall be shown, or whenever the board has knowledge that any person to whom a permit has been issued under this article has violated any of the provisions of this article, or that any promoter, agent or solicitor of a permit holder has misrepresented the purpose of the solicitation, the board shall immediately suspend the permit and give the permit holder written notice by certified mail of the hearing to be held within fifteen days of such suspension to determine whether or not the permit should be revoked. This notice must contain a statement of the facts upon which the board has acted in suspending the permit.

B. At the hearing, the permit holder and any other interested person shall have the right to present evidence as to the facts upon which the board based the suspension of the permit, and any other facts which may aid the board in determining whether this article has been violated and

whether the information furnished with the application has been misrepresented.

C. If, after such hearing, the board finds that the article has been violated, or the information furnished with the application has been misrepresented, it shall within fifteen days alter the hearing file in the director's office for public inspection, and serve upon the permit holder, and all interested persons participating in the hearing, a written statement of the facts upon which it based such findings, and shall immediately revoke the permit.

D. If, after such hearing, the board finds that this article has not been violated and the purpose of the solicitation has not been misrepresented, it shall within fifteen days after the hearing file in the director's office for public inspection, and serve upon the permit holder and all interested persons participating in the hearing, a written statement of the facts upon which it based such findings, and shall immediately revoke the permit. If, after such hearing, the board finds that this article has not been violated and the purpose of the solicitation has not been misrepresented, it shall within fifteen days after the hearing give to the permit holder a written statement canceling the suspension of the permit and stating that no violation or misrepresentation was found to have been committed. (Prior code § 37-1-27)

6.64.190 Reports required from permit holder.

A. It shall be the duty of all persons issued permits under this article to furnish to the board within ninety days after the close of the organization's fiscal year or completion of the authorized solicitation, whichever comes first, a detailed report and financial statement prepared by either a certified public accountant or a licensed public accountant, showing the amount raised by the solicitation, the amount expended in collecting such funds, and including a detailed report of the wages, fees, commissions and expenses paid to any person in connection with such solicitation, and the disposition of the balance of the funds collected by the solicitation.

B. The requirements for financial data submitted pursuant to this section are as follows:

1. For gross solicitations of less than twenty-five thousand dollars, a properly completed Form 990 must be submitted. This return should be prepared by a certified public accountant or other qualified paid preparer. In the event the return is prepared by an employee, officer or director of the organization, additional financial information such as compiled financial statements may be required at the discretion of the charitable solicitations board.

2. Gross solicitations of twenty-five thousand dollars and up to seventy-five thousand dollars shall require a compilation of the financial statements with full disclosures.

3. Gross solicitations of more than seventy-five thousand dollars and up to two hundred thousand dollars shall require reviewed financial statements.

4. Gross solicitations of more than two hundred thousand dollars shall require audited financial statements.

C. Disclosed within the financial statements shall be actual funds raised from public support through solicitation efforts and the fundraising cost associated with those efforts. (This disclosure can be made within the financial statements or by footnote disclosure.) The terms "compilation," "review" and "audit" shall be interpreted as defined by the American Institute of Certified Public Accountants. Such compilations, reviews and audits shall be prepared in accordance with generally accepted accounting principles and comply with those standards applicable to nonprofit organizations. The required financial statements shall be prepared by a certified public accountant or a licensed public accountant.

1. This report shall be available for the public's inspection in the metropolitan clerk's office or the office of the director at any reasonable time; however, the board may extend the time for the filing of the report required by this section for an additional period of thirty days upon proof that the filing of the report within the time specified will work unnecessary hardship on the permit holder. Additional extensions of time may be granted by the board, but only after they have been approved by the majority vote of the board.

2. The permit holder shall make available to the board or to any person designated in writing by the board as its representative for such purpose all books, records and papers whereby the accuracy of the report by this section may be checked.

D. Upon request by any solicitee, a charitable organization shall mail the solicitee, free of charge and within thirty days of the request, a copy of the charitable organization's latest financial statement furnished to the board pursuant to this section. (Ord. 96-319 § 2, 1996; Ord. 89-1091 § 10, 1990; prior code § 37-1-28)

6.64.200 Statements deemed public records.

Statements included on applications, reports and all other documents and information required to be filed by this article or requested by the board shall be public records as set out in Tennessee Code Annotated, Sections 10-7-101, et seq. (Ord. 89-1091 § 11, 1990: prior code § 37-1-29)

6.64.210 Appeals.

A. The action of the board in connection with the issuance of a permit of any kind, including the revocation of a permit, may be reviewed by statutory writ of certiorari with a trial de novo as a substitute for an appeal, such writ of certiorari to be addressed to the circuit or chancery court of Davidson County. Such writ of certiorari may only be pursued, however, after the applicant has exhausted the remedies for appeal described in Sections 6.64.170 and 6.64.180.

B. Immediately upon the grant of a writ of certiorari, the board shall cause to be made, certified and forwarded to such court, a complete transcript of any proceedings before the board referred to in Sections 6.64.170 and 6.64.180.

C. Provided, further, the provisions of this section, pursued in conjunction with Sections 6.64.170 and 6.64.180, shall be the sole remedy and exclusive method of review of any action or order of the board. Any party dissatisfied with the decree of the court may, upon giving bond as required on other cases, appeal to the Supreme Court, where the cause shall be heard upon the transcript of the records from the circuit or chancery court. (Prior code § 37-1-32)

6.64.220 Misrepresentation prohibited.

No person shall directly or indirectly solicit contributions for any purpose by misrepresentation of his name, occupation, financial condition, social condition or residence, and no person shall make or perpetrate any other misstatement, deception or fraud in connection with any solicitation of any contribution for any purpose in the area of the metropolitan government, or in any application or report filed under this article. (Prior code § 37-1-31)

6.64.230 Violation and penalty.

Any person violating any of the provisions of this article, or filing, or causing to be filed, an application for a permit or certificate under this article containing false or fraudulent statements, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than fifty dollars. Each solicitation which occurs in violation of this article shall be deemed a separate offense. (Prior code § 37-1-33)

Chapter 6.68

SOLID FUEL SALES OR HAULING

Sections:

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6.68.020 Hauling emergency supply for own use.
6.68.030 Permit required.
6.68.040 Application—Notice of changes.
6.68.050 Bond required.
6.68.060 Permit conditions.
6.68.070 Application—Notice of approval or disapproval—Issuance of permit.
6.68.080 Expiration of permit.
6.68.090 Special permits issued when.
6.68.100 Permit register required.
6.68.110 Permit—Refusal to grant—Revocation.
6.68.120 Display of vehicle information.
6.68.130 Certified registration sticker.
6.68.140 Registration fees.
6.68.150 Maximum load for coal trucks.
6.68.160 Change in supply source.
6.68.170 Inspection authority—Right of entry.

6.68.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Fuel peddler" means any person who lawfully distributes, advertises, sells or offers for sale or delivery solid fuel in quantities of less than one thousand pounds in bags, baskets or bushel measures. Nothing in this chapter shall be construed to govern a fuel peddler or his vehicle duly licensed under the ordinances of the metropolitan government.

"Haul," or any other word derived from the word "haul," means and shall pertain to the hauling, transporting, distributing or delivering of solid fuel for use or consumption in the metropolitan government area by any person, regardless of such person's interest in the solid fuel other than its haulage, transportation, distribution or delivery. Any person engaged in such practice shall be termed a "fuel hauler."

"Solid fuel" means any anthracite, semianthracite, bituminous or lignite coal, brickette, boulets, coke, gashouse coke, petroleum coke, carbonized coal, petroleum carbon or any other mined, manufactured, processed or patented fuel not sold by liquid or metered measure.

"Solid fuel permit" means a certificate of authority under which any person may lawfully produce or haul solid fuel for use or consumption in the metropolitan government area.

"Storage," or any other word derived from the word "store," means and shall pertain to solid fuel stored for immediate or future hauling.

"Vehicle" means any wagon, cart, truck, machine, tractor, trailer, semitrailer, automobile or any vehicle of any kind used for the importing or hauling of solid fuel on the streets of the metropolitan government area. (Prior code § 42-1-32)

6.68.020 Hauling emergency supply for own use.

Nothing in this chapter shall be construed to govern or prohibit any person in the hauling of an emergency supply of solid fuel in an amount not to exceed two hundred fifty pounds of solid fuel for his own individual use, if such limited supply of solid fuel has been procured from a permittee under this article; provided, that such emergency supply of solid fuel shall be in compliance with all metropolitan government ordinances regulating smoke control and the production, handling, importing, storing, selling, transporting, hauling, advertising, delivering, distributing, use or consumption of solid fuel. (Prior code § 42-1-33)

6.68.030 Permit required.

No person shall produce, import or haul any solid fuel, nor shall any person store any solid fuel for immediate or future hauling for use in the metropolitan government area, without first obtaining a solid fuel permit, as provided in this chapter. (Prior code § 42-1-34)

6.68.040 Application—Notice of changes.

A. Any person making application for a solid fuel permit shall file a statement on a printed form provided by the sealer of weights and measures for that purpose, stating:

1. The name, residence and location of the business place of the applicant;

2. If the applicant is a firm, the name of each member of the firm and the location of the chief place of business;

3. If the applicant is a corporation, the names of the president, secretary and the business manager or superintendent thereof, and the addresses of such persons;

4. The precise nature of the business to be carried on by the applicant;

5. The name of the person in charge of each business place of the applicant in the metropolitan government area where solid fuel is to be hauled, transported, stored, imported, delivered, used, handled, sold, traded or exchanged, delivered, distributed, advertised or offered for sale, delivery, distribution, use or consumption;

6. The location of the branches, locations or yards owned or controlled by the applicant, and the average annual quantity of solid fuel hauled and distributed for use or consumption within the metropolitan government area;

7. Where solid fuel is imported or hauled from localities outside of the metropolitan government area or purchased from other parties within the metropolitan government area, a detailed statement of the localities or places from which such solid fuels are brought and the names and post office addresses of the persons supplying the same, the location of the shipping stations, if any, and a statement of the average quantity received from each person annually;

8. The number of vehicles used in the business of the applicant and the state vehicle license number and a description of each vehicle, including the weight and capacity of each vehicle to be used in hauling solid fuel.

B. If any change is made in the firm, officers, managers, nature of business, vehicles or names or addresses of shippers or other persons supplying solid fuel, or in any other matter of information required by this section, written notice thereof shall forthwith be given to the sealer of weights and measures for insertion in and correction of the records of the division of purchases. (Prior code § 42-1-35)

6.68.050 Bond required.

No solid fuel permit shall be issued or remain in force unless the applicant for the permit or the permittee has complied with this section with the respect to its surety requirements as follows:

A. Before any application for a permit shall be approved, the applicant shall file with the sealer of weights and measures a bond executed by some surety company, insurance company, association or other insurer authorized and licensed to transact business in the state, such bond to be in the name of the metropolitan government, in the penal sum of one thousand dollars.

B. The bond shall be conditioned to save harmless any person or purchaser involved in any transaction with the permittee so bonded, pertaining to the importing, producing or hauling of solid fuel for consumption in the metropolitan government area, and further conditioned that the person obtaining such permit shall not violate any of the provisions of this chapter or any other ordinance or law regulating the handling, storing, importing, selling, hauling, trading or exchanging, transporting, delivering, distributing, using, consuming or advertising or offering for sale, delivery, distribution, use or consumption of solid fuel in the metropolitan government area, and further conditioned that he will pay all fees required herein or in any other ordinance, together with all fines, penalties and for-

feitures which may be adjudged against him under the provisions of this chapter or any other law or ordinance regulating the handling, storing, using, consuming, importing, selling, hauling, trading or exchanging, transporting, delivering, distributing, advertising or offering for sale, delivery or distribution of solid fuel for use or consumption in the metropolitan government area.

C. Such bond shall be for the use and benefit of the metropolitan government and persons who shall purchase, use, consume or be financially interested in any solid fuel hauled, imported or produced in the metropolitan government area. Such bond shall be further conditioned to give assurance and guarantee to the metropolitan government and all other persons against loss or damage or fines or penalties, by reason of any violation on the part of the permittee hereunder of this chapter or any other ordinance of the metropolitan government regulating the handling, storing, importing, selling, hauling, trading or exchanging, transporting, delivering, distributing, advertising or offering for sale, delivery, distribution, use or consumption of solid fuel.

D. Each surety bond shall be in the usual form of surety bond, and shall contain the following endorsement:

> The surety bond to which this endorsement is attached is designed and issued to comply with the provisions of Chapters 6.68 and 6.76 of the Code of the Metropolitan Government of Nashville and Davidson County, which requires, among other things, the furnishing of a bond and the payment of fees for the issuance of permits and prescribes the powers and duties of the sealer of weights and measures and provides penalties for the violation of such chapters. Should anything contained in this bond conflict with the provisions of such chapters, then the provisions of such chapters shall prevail to the extent of the coverage of the limits of liability described in such chapters. It is understood and agreed that the right of any purchaser, consumer or any other person thereunder shall not be affected by any violation of any provisions of the bond; but all the terms and conditions of the bond shall remain in full force and be binding between the company and the assured, such Metropolitan Government and any person suffering loss or damage or prosecution by reason of any violation of such chapters by, or on the part, of the assured. It is also understood and agreed that no cancellation of this bond at the request of the named assured or the company shall become effective until after the expiration of the ten days' written notice of such proposed cancellation has been filed with the sealer of weights and measures of such Metropolitan Government.

(Prior code § 42-1-36)

6.68.060 Permit conditions.

No solid fuel permit shall be issued to any person to produce, import or haul any solid fuel or to store any solid fuel for immediate or future hauling for use in the metropolitan government area unless such person maintains a regular yard within the metropolitan government area or unless such person maintains a regular coal yard within a mile and one-half of the corporate limits of the metropolitan government area, equipped with scales approved by the metropolitan sealer of weights and measures, and unless such person maintains on duty in such yard, during regular working hours, at least one licensed weigher, and unless the solid fuel in the yard shall be subject to inspection by the sealer of weights and measures at all reasonable hours. (Prior code § 42-1-37)

6.68.070 Application—Notice of approval or disapproval—Issuance of permit.

A. Upon approval or disapproval of any application for a permit under this chapter, the sealer of weights and measures shall post a public notice of this decision in his office. He shall, at the same time, transmit notice of his decision to the applicant and to the purchasing agent.

B. If, after ten days from the date of a decision of the sealer of weights and measures, approving an application, no protest or appeal has been filed, the division of purchases shall issue such applicant a solid fuel permit. (Prior code § 42-1-38)

6.68.080 Expiration of permit.

Each solid fuel permit issued shall run until the thirty-first day of March next succeeding. (Prior code § 42-1-40)

6.68.090 Special permits issued when.

A special permit may be issued to a consumer, authorizing importation of a specified quantity of coal upon specified weights and measures for the inspection of such coal prior to unloading, for which a fee of twenty-five cents shall be collected. Any person hauling coal within the metropolitan government area under such special permit shall keep a duplicate copy thereof in his possession. (Prior code § 42-1-39)

6.68.100 Permit register required.

The sealer of weights and measures shall keep a public register of each solid fuel permit issued, by the number thereof, the name of the person to whom it is issued, the date when issued, the date of expiration of the same, the amount paid therefor, the amount of the bond furnished by the permittee upon making application for such permit, together with the name and address of the surety, the number of vehicles, a description of each vehicle registered

and such other information as he may reasonably require and such information as may be required by this chapter or any other ordinance with respect to the storing, handling, importing, selling, hauling, trading or exchanging, transporting, delivering, distributing, advertising or offering for sale, delivery or distribution, use or consumption of any solid fuel in the metropolitan government area. (Prior code § 42-1-41)

6.68.110 Permit—Refusal to grant—Revocation.

A. The sealer of weights and measures may refuse to grant a solid fuel permit and he may revoke the permit of any permittee who, after April 7, 1943, shall have been convicted of violating any ordinances of the former city of Nashville, Davidson County or the metropolitan government concerning the use or consumption of solid fuel, the inspection and regulation of the handling of solid fuel or the inspection of the sale of solid fuel, or shall have been convicted of misrepresenting the size, grade, quality, weight or method of preparation of solid fuel, or when any requirement of Chapters 6.68 and 6.76 is not complied with, or when the sealer of weights and measures shall have found the issuance or continuation of any such permit will not be consistent with the public welfare.

B. The sealer of weights and measures, with the approval of the division of purchases, may revoke any permit for any of the reasons for which they may refuse to issue a permit. (Prior code § 42-1-42)

6.68.120 Display of vehicle information.

Every person who shall haul any solid fuel shall display and keep displayed at all times, in a prominent place on the outer left side and outer right side of each vehicle used for such hauling, his name, his solid fuel permit number and his address by street and number, in letters not less than three inches in height; and he shall keep such printed name, address and permit number in such condition that the same shall be legible. (Prior code § 42-1-43)

6.68.130 Certified registration sticker.

For each truck registered under the terms of this chapter, the sealer of weights and measures shall provide a sticker certifying that the truck is properly registered for the current year. Such sticker shall be attached to the windshield of the truck in the lower left-hand corner thereof. (Prior code § 42-1-44)

6.68.140 Registration fees.

Every person who shall make application for a solid fuel permit shall pay a fee of two dollars and fifty cents for the annual registration fee and registration cost of one truck. A fee of twenty-five cents shall be charged as registration cost for each additional truck registered under such solid fuel permit. (Prior code § 42-1-45)

6.68.150 Maximum load for coal trucks.

No vehicle for the hauling of coal shall haul a load in excess of one and one-half the factory rating of such vehicle. (Prior code § 42-1-48)

6.68.160 Change in supply source.

If a permittee under this chapter wishes to purchase solid fuel from a source of supply not given on the list submitted at the time the application for a solid fuel permit is made, the sealer of weights and measures shall be notified. (Prior code § 42-1-46)

6.68.170 Inspection authority—Right of entry.

In the general performance of their duties or for the purpose of obtaining facts with respect to the compliance with this chapter, the sealer of weights and measures and his inspectors are authorized to enter at all reasonable hours upon and into any buildings, establishments, premises and enclosures in or from which they have reason to believe that the provisions of this chapter are being violated, and to inspect or examine such buildings, establishments, premises or enclosures, and shall be permitted to examine all books, papers and records pertaining to solid fuel. (Prior code § 42-1-47)

Chapter 6.72

TAXICABS

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6.72.500 Violation—Penalties.

6.72.010 Definitions.

The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them by this section:

"Approved mechanic" means a mechanic on a list maintained by the commission director. The list shall contain the name of each mechanic that has applied to the director for inclusion and who (1) has met all requirements of the National Institute for Automotive Service Excel-

lence, (2) does not own, lease or drive a taxicab, (3) has no financial interest in any taxicab vehicle, company, or taximeter installation/repair service, and (4) is not employed by any taxicab or taximeter business.

"Certificate" means a certificate of public convenience and necessity issued by the metropolitan transportation licensing commission, authorizing the holder thereof to conduct a taxicab business within the metropolitan government area.

"Cruising" means the driving of a taxicab on the streets, alleys or public places of the metropolitan government area in search of or soliciting prospective passengers for hire.

"Discontinued operations" means any cessation of business, including the operation of taxicabs, carrying of fares, dispatch of calls, receipt of requests for services by telephone, or other provision of services, for more than twenty-four continuous hours.

"Driver's permit" means the permission granted by the metropolitan transportation licensing commission in accordance with Article II of this chapter authorizing a person to operate a taxicab upon the streets and roads of the metropolitan government area.

"Holder" means a person to whom a certificate of public convenience and necessity has been issued.

"Lease driver" means a taxicab driver who has leased a taxicab from a certificate holder or taxicab owner.

"Manifest" means a daily record prepared by a taxicab driver of all trips made by such driver, showing time and place of origin, destination, number of passengers and the amount of fare of each trip.

"Metropolitan transportation licensing commission" means the administrative agency of the metropolitan government having exclusive jurisdiction of the licensing and regulation of all vehicles for hire as set forth in Chapter 2.100 of this code.

"Owner" means the person who holds the legal title of the taxicab.

"Person" means any individual, partnership, corporation, association or public or private organization of any character.

"Rate card" means a card issued by the metropolitan transportation licensing commission for display in each taxicab, which contains the rates of fare then in force.

"Safety certificate" means a document from an approved mechanic certifying that a particular vehicle meets all vehicle safety standards set forth in this chapter and in regulations adopted pursuant to this chapter.

"Taxicab" means a motor vehicle regularly engaged in the business of carrying passengers for hire, donation, gratuity or any other form of remuneration, having a seating capacity of less than nine persons and not operated on a fixed route.

"Taxicab stand" means a place alongside a street, or elsewhere, where the metropolitan transportation licensing commission has authorized a holder of certificate of public convenience to park for picking up or discharging passengers.

"Taximeter" means a meter instrument or device attached to a taxicab which mechanically measures the distance driven and the waiting time upon which the fare is based.

"Vehicle for hire" means any public conveyance operated to transport fourteen or fewer passengers for compensation. Excluded from this definition are vehicles exclusively regulated by the state department of safety.

"Waiting time" means the time when a taxicab is not in motion from the time of acceptance of a passenger to the time of discharge, but such term does not include any time that the taxicab is not in motion if due to any cause other than the request, acts or fault of a passenger. (Ord. BL2000-325 § 1 (part), 2000)

Article I. Certificate of Public Convenience and Necessity

6.72.020 Required.

No person shall operate or permit a taxicab, as defined in Section 6.72.010, owned or controlled by him or her to operate upon the streets and roads in the area of the metropolitan government without having first obtained a certificate of public convenience and necessity from the metropolitan transportation licensing commission. (Ord. BL2000-325 § 1 (part), 2000)

6.72.030 Application—Information and fees required.

A. An application for a certificate of public convenience and necessity shall be filed with the metropolitan transportation licensing commission upon forms provided by the commission and upon the payment of a nonrefundable fee in an amount to be established by the commission based upon the cost of processing the application.

B. Such application shall, at a minimum, require the following information:

1. The name and address of the applicant, which must be in the metropolitan government area;

2. Proof of United States citizenship or residency authorization by the United States Immigration and Naturalization Service;

3. The financial status of the applicant, including any judgments against the applicant, together with information regarding the amount of any such judgment and the

nature of the transaction or acts giving rise to such judgments. This information shall be presented in a certified financial statement current within thirty days of the date of application submission;

4. The experience of the applicant in the transportation of passengers;

5. Any facts and information, as listed in Section 6.72.060(B), which the applicant believes tends to prove that public convenience and necessity require the granting of the certificate;

6. The number of vehicles and their year models to be operated or controlled by the applicant and the location of proposed depots and terminals. A new applicant must have no fewer than twenty vehicles. An applicant for renewal must continually sustain no fewer than fifteen vehicles for renewal;

7. The color scheme and insignia to be used to designate the vehicles of the applicant;

8. Any commitment to deliver services in areas not currently adequately served or service improvements above the level of service generally available from taxicabs currently operating in the metropolitan government area;

9. Procedures for training drivers;

10. Rules and regulations governing driver appearance and conduct;

11. Such further information as the metropolitan transportation licensing commission may require.

C. An applicant for a certificate of public convenience and necessity will be ineligible for consideration if:

1. Any of the partners, officers or directors are under twenty-one years of age and/or the taxicab business has no separate legal existence beyond a shareholder, owner, or partner who is under eighteen years of age;

2. Any of the partners, officers or directors have been convicted of, forfeited a bond, or pleaded guilty or nolo contendere to a felony or offense involving a controlled substance, prostitution, assignation, obscenity, or any crime of a sexual nature in any jurisdiction within five years immediately preceding the date of application.

3. Any of the owners, partners, officers or directors have violated any portion of this chapter within five years immediately preceding the date of application.

4. The application or any portion of the application is incomplete or contains incorrect or false information.

D. The commission shall conduct hearings for the issuance of certificates of public convenience and necessity.

1. The metropolitan transportation licensing commission shall fix a time and place for a public hearing, to be held annually, to review applications for certificates of public convenience and necessity.

2. Notice of such hearing shall be given to each applicant and to all persons to whom certificates of public convenience and necessity have been previously issued. Due notice shall be given to the general public by posting a notice of such hearing in the morning edition of a newspaper of general circulation in the metropolitan government area for at least three days, but not more than five days prior to the public hearing.

3. Any person may file with the metropolitan transportation licensing commission a memorandum or letter in support of or opposition to the issuance of a certificate of public convenience and necessity.

4. The metropolitan transportation licensing commission may, in its discretion, call special meetings in addition to the annual meeting for the consideration of new certificates of public convenience and necessity.

5. There shall be a nonrefundable fee, in an amount to be established by the commission based upon the cost of processing the application, charged for each request for certificates, payable at the time of application. An additional fee of seventy-five dollars shall be charged for the issuance of each approved permit associated with the certificate.

6. The notice provisions set forth in this section shall be followed when special meetings are called. (Ord. BL2000-325 § 1 (part), 2000)

6.72.035 Annual renewal.

All certificates of public convenience and necessity shall expire on August 31st of the year following the date on which the certificate was issued. All certificates may be renewed by the director for each successive year between August 1st and August 31st of each year. A renewal fee of seventy-five dollars for each approved permit to operate a taxicab shall be charged at the annual renewal of the certificate of public convenience and necessity. Failure to renew a certificate by August 31st shall result in forfeiture of the certificate. (Ord. BL2000-325 § 1 (part), 2000)

6.72.040 Request for additional permits.

A. The metropolitan transportation licensing commission shall fix a time and place for a public hearing, to be held annually, to review applications from current certificate holders for additional taxicab permits.

B. Notice of such hearing shall be given to each applicant and to all persons to whom certificates of public convenience and necessity have been previously issued. Due notice shall be given to the general public by posting a notice of such hearing in the morning edition of a newspaper of daily circulation within the metropolitan area at least three days, but not more than five days, prior to the public hearing.

C. Any person may file with the metropolitan transportation licensing commission a memorandum or letter in support of or in opposition to a request for additional taxicab permits.

D. The metropolitan transportation licensing commission may, in its discretion, call special meetings in addition to the annual meeting for the consideration of applications for new taxicab permits.

E. There shall be a nonrefundable fee, in an amount to be established by the commission based upon the cost of processing the application, charged for each request for additional permits, payable at the time of application. An additional licensing fee of seventy-five dollars shall be charged for the issuance of each approved permit.

F. The notice provisions enumerated in this section shall be followed when special meetings are called. (Ord. BL2000-325 § 1 (part), 2000)

6.72.050 Proof of financial responsibility required.

No certificate of public convenience and necessity shall be issued or continued in operation unless there is in full force and effect proof of financial responsibility for each vehicle, in an amount that is in compliance with the greater of the minimum limits set by the law of the state of Tennessee for owners and operators of motor vehicles or the minimum amount as is established by the commission. Such security shall inure to the benefit of any person who is injured or who sustains damage to property proximately caused by the negligence of a holder, his servants or his agents. Proof of financial responsibility shall be filed in the office of the metropolitan transportation licensing commission and shall have as a surety thereon a surety company authorized to do business in the state of Tennessee. (Ord. BL2000-325 § 1 (part), 2000)

6.72.060 Findings—Issuance of certificate or additional permits.

A. If the metropolitan transportation licensing commission finds that further or additional taxicab service in the metropolitan government area is required by the public convenience and necessity and that the applicant is fit, willing and able to provide such public transportation and to conform to the provisions of this chapter and the rules promulgated by the metropolitan transportation licensing commission, the metropolitan transportation licensing commission may issue a certificate of public convenience and necessity, stating the name and address of the applicant, the number of vehicles authorized upon such certificate and the date of issuance.

B. In making the above findings, the metropolitan transportation licensing commission shall, at a minimum, take into consideration the number of taxicabs already in operation, whether existing transportation is adequate to meet the public need; the character, experience, financial condition and responsibility of the applicant, and such criteria as may be adopted by the commission in its rules. (Ord. BL2000-325 § 1 (part), 2000)

6.72.065 Commission notification.

Persons granted certificates of public convenience and necessity under this article shall not change the address, company name, officers, ownership, or otherwise make any material change in the company or its identity from that set forth upon the taxicab company's original application without prior notification and approval to commission staff. Any such proposed material changes shall be brought before the commission for consideration prior to implementation. (Ord. BL2000-325 § 1 (part), 2000)

6.72.070 Quarterly reporting and fees—Disposition of revenue.

A. Persons granted certificates of public convenience and necessity under this article shall keep the metropolitan transportation licensing commission advised, quarterly, of the cabs being insured and operated, and shall, quarterly, pay to the metropolitan transportation licensing commission a fee of forty-five dollars for each of its cabs in operation, including those vehicles which as of the reporting date may be temporarily out of commission for repair, etc., as a condition precedent to the operation of such vehicle as a taxicab; and failure to comply herewith shall subject such person to the penalty provided in Section 1.01.030. The time to commence reporting quarterly and paying of the quarterly fee shall be established by rule and regulation of the metropolitan transportation licensing commission. Appropriate identification, in sticker form, shall be issued to the reporting companies for attachment to the vehicle upon which the required fee has been paid, evidencing compliance with this section. The sticker must be attached to the lower left side of the state license plate or such other place as the commission may designate. Such stickers shall be identified with the vehicles to which they are issued and shall not be transferable. Failure to display the sticker shall place the taxicab in out-of-service status and may also be cited as a violation.

B. The metropolitan transportation licensing commission shall turn over to the metropolitan treasurer all funds derived from the payment specified, and the metropolitan treasurer shall keep a separate account thereof. (Ord. BL2000-325 § 1 (part), 2000)

6.72.080 Transfers—Fee.

A. No certificate of public convenience and necessity may be sold, leased, assigned, mortgaged or otherwise transferred, nor may there be any modification of ownership as to stock, new or additional partners, etc., by a holder of a certificate of public convenience and necessity without the prior consent of the metropolitan transportation licensing commission. An application for a transfer shall be filed with the metropolitan transportation licensing commission upon forms provided by the metropolitan government and upon the payment of a nonrefundable fee, in an amount to be established by the commission based upon the cost of processing the application by the transferee of a certificate or stock in a company holding a certificate, or any new partner in a business holding a certificate.

B. An applicant for the transfer of a certificate will be ineligible for consideration if:

1. Any of the partners, officers or directors are under twenty-one years of age and/or the taxicab business has no separate legal existence beyond a shareholder, owner, or partner who is under the age of eighteen years of age;

2. Any of the owners, partners, officers or directors have been convicted of, or had a bond forfeited, or pleaded guilty or nolo contendere to a felony or any crime involving moral turpitude, as defined in TCA, 57-4-203(h)(2), or offense involving a controlled substance, prostitution, assignation, obscenity, or any crime of a sexual nature in any jurisdiction within the five years immediately preceding the date of application.

3. Any of the owners, partners, officers or directors have violated any portion of this chapter within the five years immediately preceding the date of application.

4. Any portion of the application is incomplete or contains incorrect or untruthful information.

C. Upon the filing of an application to transfer a certificate of public convenience and necessity, the metropolitan transportation licensing commission shall fix a time and place for a public hearing on the application. (Ord. BL2000-325 § 1 (part), 2000)

6.72.090 Suspension and revocation.

A. A certificate of public convenience and necessity issued under the provisions of this article may be revoked or suspended by the metropolitan transportation licensing commission if the holder thereof has:

1. Violated any of the provisions of this chapter;

2. Discontinued operations for more than five days;

3. Has violated any provision of this code or other ordinances, laws or regulations of the metropolitan government or the laws of the United States or the state of Tennessee or any other state, the violations of which reflect unfavorably on the fitness of the holder to offer public transportation.

4. Made a misrepresentation or false statement when applying for a certificate of public convenience and necessity, additional permits, or for the transfer of a certificate.

5. Fails to maintain fifteen or more vehicles in service for a period of more than five days.

B. Prior to suspension or revocation, the holder shall be given notice of the proposed action to be taken and the general basis for the proposed action and shall have an opportunity to be heard. (Ord. BL2000-325 § 1 (part), 2000)

Article II. Drivers' Permits

6.72.100 Required.

A. All owners of vehicles for hire being operated as taxicabs are required to maintain a current driver's permit and/or owner's permit. The permit shall be applied for and issued in the manner provided by in this chapter and Chapter 2.100 of this code.

B. No person shall operate a taxicab for hire upon the streets and roads of the metropolitan government area, and no person who owns or controls a taxicab shall permit such vehicle to be so driven and no taxicab licensed by the metropolitan government shall be so driven at any time for hire, unless the driver of such taxicab shall first obtain and shall have then in force a taxicab driver's permit issued under the provisions of this article. (Ord. BL2000-325 § 1 (part), 2000)

6.72.110 Application—Information and fees required.

A. An application for a taxicab driver's permit shall be filed with the metropolitan transportation licensing commission on forms provided by the commission.

B. Such application shall at a minimum contain the following information:

1. The name, residential address, telephone number and date of birth of the applicant. No applicant under twenty one years of age will be accepted.

2. The names, addresses, telephone numbers, and signatures of four persons, at least one of whom is a resident of the metropolitan government area, who have known the applicant for a period of at least one year and who will provide information regarding the applicant as specified by the commission;

3. The experience of the applicant in the transportation of passengers;

4. The educational background of the applicant;

5. A history of the applicant's employment;

6. The residential addresses of the applicant for the last five years;

C. The applicant shall sign the application form and certify, under oath, as to the truth and completeness of the responses provided. The applicant shall provide the following documents in addition to the application form in order to submit a complete application:

1. A valid Tennessee driver's license with proof of a special chauffeur's license issued by the state (Class D license with an `F' endorsement, TCA Chapter 7, Title 59).

2. If a resident alien, a current work permit or other valid United States Immigration and Naturalization Service documentation;

3. A current federal Department of Transportation (D.O.T.) medical card.

4. A current federal Department of Transportation (D.O.T.) drug and alcohol test result.

D. Each application shall be accompanied by an official driver record issued by the Tennessee Department of Safety, no more than thirty days previous to the date of application.

E. The applicant shall be ineligible to receive a permit if:

1. He or she has been convicted, pled guilty, or pled nolo contendre in the last five years for any of the following offenses involving bodily injury or death and in the last three years for any of the following offenses not involving injury or death:

a. Hit and run;

b. Driving under the influence of an alcoholic beverage or drug;

c. Reckless or careless driving.

2. For an initial permit, no more than three moving violations within the last three years and no more than two moving violations in the last year will be allowed.

3. For renewal permit, no more than four moving violations within the last three years and no more than two moving violations in the last year.

F. At the time the application is filed, the applicant shall pay to the metropolitan transportation licensing commission a fee of twenty dollars plus the cost of investigation. (Ord. BL2000-325 § 1 (part), 2000)

6.72.130 Police investigation of applicant.

A. The police department shall conduct an investigation of each applicant for a taxicab driver's permit using all appropriate local, state, and federal databases and/or sources of information. A report of such investigation and a copy of the traffic and police record of the applicant, if any, shall be attached to the application and forwarded for the consideration of the metropolitan transportation licensing commission.

B. Any applicant shall, in addition to any disqualifications listed elsewhere in this chapter, be disqualified if:

1. He/she has been convicted, pled guilty, placed on diversion, probation or parole, or pleaded nolo contendere within a period of five years prior to the date of application for violation of any of the following criminal offenses under the laws of Tennessee, any other state or of the United States: homicide, rape, aggravated assault or battery, kidnapping, robbery, burglary, child molestation, any sex-related offense, leaving the scene of an accident, criminal solicitation, or criminal attempt to commit any of the above, perjury or false swearing in making any statement under oath in connection with the application for a driver's permit, or the felony possession, sale or distribution of narcotic drugs or controlled substances. If, at the time of application, the applicant is charged with any such offenses, consideration of the application shall be deferred until entry of a plea, conviction, acquittal, dismissal, or other final disposition of the charges.

2. He/she has been convicted of two or more felony offenses within the past ten years.

3. He/she has been convicted within a period of two years prior to the date of application of the violation of two or more sections of the this code or other ordinances governing the operation of vehicles for hire. If at the time of application the applicant is charged with any of the offenses listed in this section, consideration of the application shall be deferred until entry of a plea, conviction, acquittal, dismissal or other final disposition of the charges. (Ord. BL2000-325 § 1 (part), 2000)

6.72.135 Test required.

A. At the time of initial application for a driver permit each applicant shall submit to a test administered by the metropolitan transportation licensing commission staff. The test administered shall:

1. Measure applicant's knowledge of the geography, street system, and location of major attractions of the metropolitan government area;

2. Measure applicant's knowledge of the provisions of the taxicab ordinance relating to the conduct of taxicab drivers and the operation of a taxicab;

3. Measure applicant's ability to read and speak the English language at a level necessary to interact with taxicab passengers;

4. Measure applicant's ability to read and interpret local maps.

B. Any driver whose taxicab driver's permit has lapsed for more than three years shall be required to retake the test.

C. The Commission may direct any currently permitted driver to re-take the test upon cause. (Ord. BL2000-325 § 1 (part), 2000)

6.72.140 Application—Approval or disapproval.

A. The metropolitan transportation licensing commission or its staff, shall, upon the consideration of the application and the reports and certificate required to be attached thereto, approve or reject the application. The applicant must appear in person. Any applicant disapproved by the commission staff may request an appearance within ten days, before the commission for consideration of the application.

B. The licensing commission, or its staff, may issue a temporary permit prior to receiving the results of the police investigation. This temporary driver's permit shall be limited to ninety days from issuance to expiration. (Ord. BL2000-325 § 1 (part), 2000)

6.72.150 Issuance—Contents.

Upon approval of an application for a taxicab driver's permit, the metropolitan transportation licensing commission shall issue a permit to the applicant, which shall bear the name, driver's license number, gender, race, height, weight, date of birth, and photograph of the applicant. (Ord. BL2000-325 § 1 (part), 2000)

6.72.155 New application after denial.

Upon denial of an application for a taxicab driver's permit, no new application may be submitted or considered for a period of three months. (Ord. BL2000-325 § 1 (part), 2000)

6.72.160 Expiration—Issuance and replacement fee.

A. Each taxicab driver's permit shall be issued for a period of one year or any part thereof, with all permits issued pursuant to this chapter expiring on September 30th of each year.

B. A permit for the one-year period or any portion thereof shall be issued to qualified applicants upon the payment of twenty dollars plus the costs of investigation. If the permit for the preceding year has been revoked, no new permit shall be issued without prior commission approval. Permits may be renewed by the director for each successive year between September 1st and September 30th of each year. A renewal fee of twenty dollars shall be charged for each permit issued. A ten-dollar fee shall be charged for all replacement or temporary taxicab driver permits. Such fees shall be in addition to the cost of any investigation. (Ord. BL2000-325 § 1 (part), 2000)

6.72.165 Hospitality training program—Participation required.

A. Every newly licensed limousine and/or sedan driver shall attend an approved hospitality training program within ninety days of receiving a driver's permit.

B. Every previously licensed limousine and/or sedan driver shall attend an approved ninety minute hospitality training course or refresher course prior to applying for renewal of a driver's permit each year.

C. Permits issued to new drivers shall expire after ninety days from the date of their issuance unless the endorsement of the Commission Director or staff has been placed upon the permit certifying that the required training has been completed. Upon such expiration of a permit, the driver shall not operate any taxicab until such time as he or she has applied for and been issued a permit.

D. In the event a previously licensed driver fails to satisfactorily complete the required training prior to the expiration of his or her current permit, such driver may not apply for renewal of a permit but shall be treated as a new applicant. (Ord. BL2000-325 § 1 (part), 2000)

6.72.170 Display of permit.

Every driver to whom a permit is issued under this article shall display his driver's permit in accordance with commission rules while such driver is operating a taxicab. (Ord. BL2000-325 § 1 (part), 2000)

6.72.175 Company affiliation.

Every driver granted a permit under this article shall inform the commission in writing of a change in company affiliation within one week of the change. (Ord. BL2000-325 § 1 (part), 2000)

6.72.180 Suspension and revocation.

The metropolitan transportation licensing commission is authorized to suspend or revoke any driver's permit issued under this article upon a driver's failure or refusal to comply with the provisions of this chapter or the taxicab rules and regulations. However, a permit may not be revoked or suspended until the driver has received notice of the proposed action and the general bases for the proposed action and had an opportunity to present evidence in his behalf except as otherwise specifically provided herein. A driver whose permit is revoked may not reapply for a permit for ninety days and shall be treated as a new applicant. (Ord. BL2000-325 § 1 (part), 2000)

6.72.185 Revocation of Tennessee driver's license.

The taxicab driver's permit of any driver whose Tennessee driver's license, or a driver's license issued by any other state, is suspended or revoked shall be invalid during any such period of suspension or revocation. (Ord. BL2000-325 § 1 (part), 2000)

6.72.190 Compliance with provisions.

Every driver granted a permit under this article shall comply with all local, state and federal laws and regulations. Failure to do so shall constitute cause for the revocation or suspension of his or her permit. (Ord. BL2000-325 § 1 (part), 2000)

Article III. Equipment and Operation

6.72.200 Vehicle to display company name, color scheme insignia and numbering—Restrictions.

A. Each taxicab shall bear on the outside of each front door, in painted letters not less than three inches in height, the name of the company and may, in addition, bear an identifying design which has been approved by the metropolitan transportation licensing commission.

B. No vehicle covered by the terms of this chapter shall be licensed which bears a color scheme, identifying design, monogram or insignia which, in the opinion of the metropolitan transportation licensing commission, conflicts with or imitates any color scheme, identifying design, monogram or insignia used by a vehicle or company in such manner as to be misleading or such that it tends to deceive or defraud the public.

C. If, after a certificate of public convenience and necessity has been issued for a taxicab under this chapter, the color scheme, identifying design, monogram or insignia thereof is changed so as to be, in the opinion of the metropolitan transportation licensing commission, in conflict with or imitate any color scheme, identifying design, monogram or insignia used by any other person, owner or operator, in such manner as to be misleading or such that it tends to deceive the public, the certificate of or certificate covering such taxicab shall be suspended or revoked.

D. Each taxicab shall bear on the rear and on each side, in painted numbers not less than three inches in height, an identifying serial number assigned by the metropolitan transportation licensing commission. (Ord. BL2000-325 § 1 (part), 2000)

6.72.210 Liability insurance agreement.

A. All taxicab companies shall be required to file a copy of a liability insurance agreement with the metropolitan transportation licensing commission for each taxicab operated under their certificate in an amount set by the commission.

B. These agreements shall place the vehicles operated under their certificate in the taxicab company's complete possession and control during all periods during which the vehicles is operated for hire, is available for hire, or is operated in furtherance of the certificate holder's business. The certificate holder shall assume complete liability for each and every vehicle operated under its certificate during all periods during which the vehicle is operated for hire, is available for hire, or is operated in furtherance of the certificate holder's business. (Ord. BL2000-325 § 1 (part), 2000)

6.72.220 Duty to render service—Business requirements.

A. All persons engaged in the taxicab business within the area of the metropolitan government, under the provisions of this chapter shall render service in accordance with the chapter to any member of the public desiring to use taxicabs.

B. Holders of certificates of public convenience and necessity shall maintain a fixed, central place of business within the metropolitan government area and keep the same open twenty-four hours a day for the purpose of receiving calls and dispatching cabs.

C. Holders of certificates of public convenience and necessity shall answer all calls for services within the area of the metropolitan government within a reasonable time. If service cannot be rendered within a reasonable time, the holders of certificates shall then notify the prospective passengers of how long it will be before such call can be answered and give the reason therefore.

D. Any holder of certificates of public convenience and necessity who refuses to accept a call anywhere within the area of the metropolitan government at any time when such holder has available cabs, or who shall fail or refuse to give overall service, shall be deemed in violation of this chapter, and the certificate granted to such holder may be suspended or revoked at the discretion of the metropolitan transportation licensing commission. (Ord. BL2000-325 § 1 (part), 2000)

6.72.230 Daily manifests.

A. Every taxicab driver shall maintain a daily manifest upon which is recorded all trips made each day, showing the time and place of origin and destination of each trip and the amount of fare and number of passengers. All such completed manifests shall be returned to the cab owner by the driver at the conclusion of his tour of duty each day. The forms for each manifest shall be furnished to the

driver by the cab owner and shall be of a character approved by the metropolitan transportation licensing commission.

B. Every cab owner shall retain and preserve all drivers' manifests for the previous twelve months in a safe place, and such manifests shall be available to the metropolitan transportation licensing commission. (Ord. BL2000-325 § 1 (part), 2000)

6.72.240 Inspection and maintenance of vehicles—Compliance required.

A. Prior to the use and operation of any vehicle under the provisions of this chapter, such vehicle shall be thoroughly examined and inspected by the metropolitan taxicab inspectors and found to comply with such rules and regulations as may be prescribed by the metropolitan transportation licensing commission. These rules and regulations shall be promulgated to provide safe transportation and shall specify such safety equipment and regulatory devices as the metropolitan transportation licensing commission shall deem necessary. When a taxicab inspector finds that a vehicle has met all the standards established by the metropolitan transportation licensing commission, he shall inform the commission and authorize operation of such vehicle.

B. Every vehicle operating under this chapter shall be periodically inspected by the taxicab inspectors at such intervals as shall be established by the metropolitan transportation licensing commission to ensure the continued maintenance of safe operating conditions. A certificate holder, owner or driver shall make a taxicab available for inspection at such place within the metropolitan area as the inspector may direct when ordered to do so by the director or inspector. If, upon inspection, the inspector determines that a taxicab is not in compliance with this chapter or the taxicab rules, the inspector shall, based upon the condition noted, order the taxicab be removed from service or that the vehicle be brought into compliance within a reasonable period of time and require it to be re-inspected.

C. Every vehicle operating under this chapter shall be kept in a clean and satisfactory condition according to rules and regulations promulgated by the metropolitan transportation licensing commission.

D. Every vehicle operating under this chapter shall annually undergo a detailed mechanical inspection conducted by an approved mechanic to determine if the vehicle conforms to the standards set out by the metropolitan transportation licensing commission. A safety certificate form, when completed by an approved mechanic, shall be provided to the commission director within thirty days of the inspection. (Ord. BL2000-325 § 1 (part), 2000)

6.72.245 Vehicle age limit.

No vehicle operated as a taxicab shall be more than nine years old. By December 31st of each year, automobiles of a model year ten years prior to that year must be taken out of service or replaced. The commission shall establish, by its rules, a procedure by which an affected vehicle owner may seek a waiver under this rule. The commission may also, by rule, provide for a waiver of this rule for classic automobiles and provide for a definition for "classic automobile." (Ord. BL2000-325 § 1 (part), 2000)

6.72.250 Rate schedule and card.

A. No owner or driver of a taxicab shall charge a greater sum for the use of a taxicab than the rates set below:

1. There is established maximum and minimum rates to be charged for taxicab service. The maximum charge for activating the meter shall be no greater than three dollars and the minimum charge shall be no less than two dollars. A minimum charge for transporting a fare from the metropolitan airport to any destination shall be two dollars and seventy cents. A minimum charge for transporting a fare outside the Briley Parkway/White Bridge Road/Woodmont Avenue/Thompson Lane Circle out to the Davidson County line area shall be two dollars and seventy cents. The maximum charge for each mile thereafter shall be no greater than one dollar and sixty cents through December 31, 2000; no greater than one dollar and seventy cents through December 31, 2001; no greater than one dollar and eighty cents through December 31, 2002; no greater than one dollar and ninety cents through December 31, 2003; and no greater than two dollars thereafter. The minimum charge for each one-fifteenth of a mile shall be no less than ten cents.

2. There will be an additional charge for waiting time, which shall be thirty cents for each one minute of waiting. Waiting time shall be charged only for stops or delays caused or requested by the passenger(s) and shall not apply to stops or delays due to any other cause.

B. The metropolitan transportation licensing commission shall furnish rate cards to the holders of certificates of public convenience and necessity. The rate cards shall be displayed conspicuously in the rear compartment or interior of the vehicle in such a position that it can be read easily by the occupants of the vehicle. Failure to display the rate card in a conspicuous manner shall be grounds for revocation or suspension of the permit for operation of the taxicab in which the rate card was not properly displayed.

C. The metropolitan transportation licensing commission may authorize a surcharge for special events in accordance with commission rules.

D. The metropolitan transportation licensing commission may authorize flat fares between specific destinations in accordance with commission rides. (Ord. BL2000-325 § 1 (part), 2000)

6.72.260 Rate changes—Display in vehicle.

Each taxicab company shall be required to file with the metropolitan transportation licensing commission a list of their rates thirty days prior to any change and there shall not be more than one rate charged by any one taxicab, with the exception of a senior citizen or handicapped discount or as provided in Section 6.72.450 of this code. The rate charged by each taxicab shall be the same as that on file with the metropolitan transportation licensing commission and shall be posted conspicuously within the taxicab. (Ord. BL2000-325 § 1 (part), 2000)

6.72.265 Taximeters.

A. All taxicabs operated under the authority of this chapter shall be equipped with taximeters fastened in front of the passengers, visible to them at all times day and night. After sundown, the face of the taximeter shall be illuminated. Such taximeters shall be operated mechanically by a device of standard design and construction, operated either from the transmission or from one of the front wheels by a flexible and permanently attached driving mechanism. Each taximeter shall denote when the vehicle is employed and when it is not employed. It shall be the duty of the driver to activate such taximeter into a recording position at the beginning of each trip and to deactivate such taximeter into a non-recording position at the termination of each trip.

B. Taximeters shall be subject to inspection by the taxicab inspectors. Any inspector is authorized, either on complaint of any person or without such complaint, to inspect any meter, and upon discovery of any inaccuracy, to notify the person operating such taxicab to cease operation. Such taxicab shall be kept off the highways until the taximeter is repaired and in required working condition to the satisfaction of the inspector.

C. Taximeters shall be inspected, tested and sealed at least once every year by a taximeter company approved by the metropolitan transportation licensing commission. The commission shall establish rules setting forth the criteria by which taximeter companies may apply for approval. (Ord. BL2000-325 § 1 (part), 2000)

6.72.270 Receipts.

The driver of any taxicab shall, upon request by the passenger, provide a receipt for the amount charged, either by a mechanically printed receipt or by a specially prepared receipt, on which shall be the name of the taxicab company, taxicab number and driver name, the amount of meter reading or charges, the points of trip origin and final destination, and the date of transaction. (Ord. BL2000-325 § 1 (part), 2000)

6.72.280 Operating records and reports.

A. Every holder of a certificate of public convenience and necessity shall keep accurate records of receipts of operation, operating and other expenses, expenditures and such other operating information as may be required by the metropolitan transportation licensing commission. Every such holder shall, for a period of twelve months, or such period as may otherwise be set by the commission, maintain the records containing such information and other information required by this chapter at a place readily accessible for examination by the metropolitan transportation licensing commission.

B. Every holder of a certificate of public convenience and necessity shall keep accurate daily records of the drivers and vehicles on duty, including the times in and out of service. The forms utilized shall include information required by the metropolitan transportation licensing commission. (Ord. BL2000-325 § 1 (part), 2000)

6.72.290 Accidents.

A. All accidents arising from or in connection with the operation of taxicabs which result in death or injury to any person on or in damage to any vehicle, or to any property in an amount exceeding the sum of four hundred dollars shall be reported within seventy-two hours from the time of occurrence to the metropolitan transportation licensing commission on a form to be furnished by the commission. Any taxicab damaged in an accident may not be returned to service until an approved safety inspection under the provision of Section 6.72.240 has been completed by a taxicab inspector.

B. A taxicab driver operating a taxicab at the time of an accident involving bodily injury or death is required to report for a drug screen, within twenty-four hours from the time of occurrence, at a testing site designated by the metropolitan transportation licensing commission. Failure to report for such a screen may result in revocation of the taxicab driver's permit.

C. A taxicab damaged in an accident, but still operable without placing the driver or passengers at risk, must be repaired within two weeks of the accident or removed from operation until repaired. (Ord. BL2000-325 § 1 (part), 2000)

6.72.300 Taxicab stands—Prohibited vehicles.

Private vehicles, taxicabs not in service or other vehicles for hire shall not at any time occupy the space upon

the streets that have been established as taxicab stands. (Ord. BL2000-325 § 1 (part), 2000)

6.72.310 Taxicab stands—Established—Regulations.

A. The metropolitan transportation licensing commission is authorized and empowered to and shall establish taxicab stands upon the streets of the metropolitan government in such places as, in its discretion, it deems proper. The commission is further authorized to eliminate any taxicab stands now in use or later established. The traffic and parking commission shall make an investigation of the traffic conditions at such places and shall thereafter file their written recommendations with the metropolitan transportation licensing commission.

B. Public or Open Stands. Any taxicab stand established in accordance with subsection A of this section shall be a public or open stand available to all licensed taxicabs. A passenger has the right to select a cab of his choice or preference at any such stand.

C. Prohibited Conduct. It is unlawful for any person to obstruct or interfere with the free use and enjoyment of any public or open taxicab stand by any licensed taxicab. (Ord. BL2000-325 § 1 (part), 2000)

6.72.320 Passengers—Maximum number.

No driver or certificate holder shall permit more persons to be carried in a taxicab as passengers than the manufacturer's rated seating capacity of the taxicab. (Ord. BL2000-325 § 1 (part), 2000)

6.72.330 Passengers—Additional passengers permitted when—Charges.

A. No taxicab driver shall permit any other person, except as otherwise provided in this chapter, to occupy or ride in such taxicab unless the person first employing the taxicab shall consent to the acceptance of additional passengers.

B. A charge for additional passengers, not to exceed one dollar per passenger, when such passengers are accompanying the original passenger and proceeding to the same destination, may be collected. If an additional passenger rides beyond the original passenger's destination, he or she shall be charged only for the additional distance so traveled. (Ord. BL2000-325 § 1 (part), 2000)

6.72.340 Passengers—Receiving and discharging by drivers.

Drivers of taxicabs shall not receive or discharge passengers upon the roadway, but shall pull to the extreme right-hand side of the road or to the sidewalk and there receive or discharge passengers, except upon one-way streets where passengers may be discharged at either side of the roadway in the absence of a sidewalk. Nothing in this section shall be construed to permit the parking of a vehicle at any place where parking is otherwise restricted or prohibited. (Ord. BL2000-325 § 1 (part), 2000)

6.72.350 Passengers—Refusal to pay legal fare.

It is unlawful for any person to refuse to pay the legal fare of any for the services mentioned in this chapter after having hired the same, and it is unlawful for any person to hire any such vehicle with intent to defraud the person hired of the value of such service. A taxicab driver shall have the right to demand payment in advance for a fare projected to be twenty dollars or more and may refuse employment unless so paid. (Ord. BL2000-325 § 1 (part), 2000)

6.72.360 Refusal to carry orderly passengers.

No taxicab driver may refuse or neglect to convey any orderly person or persons, upon request, unless currently employed or unless the taxicab driver has reason to believe that the person is engaged in a violation of federal, state or local laws or has reasonable basis to fear injury to him or herself. (Ord. BL2000-325 § 1 (part), 2000)

6.72.365 Disposition of disorderly passengers.

Drivers shall act in a reasonable manner in dealing with disorderly passengers. (Ord. BL2000-325 § 1 (part), 2000)

6.72.370 Soliciting passengers.

No taxicab driver shall solicit passengers for a taxicab, except when sitting in the driver's compartment of such taxicab or while standing immediately adjacent to the curb. The driver of any taxicab shall remain in the driver's compartment or immediately adjacent to his vehicle at all times when such vehicle is upon the public streets; except that, when reasonably necessary, a driver may be absent from his taxicab for not more than ten consecutive minutes; provided further, that nothing herein contained shall be held to prohibit any driver from alighting to the street or sidewalk for the purpose of assisting passengers into or out of such vehicle. (Ord. BL2000-325 § 1 (part), 2000)

6.72.390 Soliciting business.

No driver of a taxicab shall offer any compensation of whatever form to any person or entity in exchange for the direction or recommendation of passengers to that driver's taxicab. (Ord. BL2000-325 § 1 (part), 2000)

6.72.400 Prohibited manner of soliciting.

No taxicab driver shall solicit patronage in a loud or annoying tone of voice or in any manner annoy any person or obstruct the movement of any persons, or follow any person for the purpose of soliciting patronage. (Ord. BL2000-325 § 1 (part), 2000)

6.72.405 Map requirement.

All taxicabs operated under the authority of this chapter shall carry a current map of Metropolitan Nashville and Davidson County in a place immediately accessible to the driver. (Ord. BL2000-325 § 1 (part), 2000)

6.72.410 Toplight required.

All taxicabs operated under the authority of this chapter shall be equipped with a toplight of standard design and construction on the roof of the vehicle, visible to potential passengers at all times of day and night. Each toplight shall be illuminated when a taxicab is available for hire, and turned off when a taxicab is in service. It shall be the duty of the driver to activate such toplight at the beginning of each trip and to deactivate such toplight at the termination of each trip. (Ord. BL2000-325 § 1 (part), 2000)

6.72.415 Driver appearance.

A. Every taxicab driver, while on duty, shall keep a clean and well-groomed appearance, and shall be dressed in compliance with those rules adopted by the commission.

B. The rules of the commission shall, at a minimum, prohibit the following articles when worn as outer garments: T-shirts, undergarments, tank tops, swimwear, jogging suits, body shirts, shorts, cut-off pants, trunks, sandals, clogs and other similar attire. Offensive words or symbols on clothing are also prohibited. (Ord. BL2000-325 § 1 (part), 2000)

6.72.420 Advertising on vehicles.

Subject to the rules and regulations of the metropolitan transportation licensing commission, it shall be lawful for any person owning or operating a taxicab or other motor vehicle for hire to permit advertising matter to be affixed to or installed in or on such taxicabs or motor vehicles for hire. Bumper stickers are prohibited. (Ord. BL2000-325 § 1 (part), 2000)

6.72.425 Vehicle safety devices.

Subject to the rules and regulations of the metropolitan transportation licensing commission, it shall be lawful for any person owning or operating a taxicab or motor vehicle for hire to permit safety devices, including shields, alarms, cameras, and cash boxes to be affixed to or installed in or on such taxicabs or motor vehicles for hire. (Ord. BL2000-325 § 1 (part), 2000)

6.72.430 Prohibited acts by driver.

A. No taxicab driver shall engage in illegally selling intoxicating liquors or controlled substances, or soliciting business from any house of ill repute or use his or her vehicle for any purpose other than the transporting of paying passengers.

B. No taxicab driver shall engage in abusive language or conduct, including, but not limited to, cursing, verbal insults or derogatory comments in the presence of passengers.

C. While on duty, no taxicab driver shall be under the influence or engaged in the consumption of any intoxicant, including, but not limited, to alcoholic beverages.

D. No taxicab driver shall work more than sixteen driving hours in the aggregate during any twenty-four hour period, and such driver shall not begin to drive unless he or she has had at least eight consecutive hours of rest immediately prior to doing so. The certificate holder is responsible, in conjunction with the driver, to ensure compliance with this requirement.

E. No taxicab driver shall drive any other than the shortest and most direct route in transporting a passenger from the point of pick-up to the point of destination, unless otherwise requested by the passenger.

F. No driver shall fail to comply with all state, local and federal laws. (Ord. BL2000-325 § 1 (part), 2000)

6.72.435 Taxicab passenger's bill of rights.

A. All taxicab passengers within the area of the metropolitan government shall have the following rights:

1. A professional driver who is licensed and knowledgeable about major routes, destinations, and attractions in Nashville and Davidson County;
2. A driver who knows and obeys all traffic laws and ordinances related to taxicabs;
3. A driver who speaks and understands English and is courteous providing passenger assistance as well as a safe ride;
4. A quality taxicab that is mechanically free of problems and is clean both in the passenger areas as well as the trunk area;
5. Smoke- and incense-free air while in the taxicab;
6. A silent trip without the driver engaging in personal wireless telephone calls;
7. Air conditioning and heat upon request;
8. Direct the destination and the route to be traveled;

9. The right to refuse to tip; and

10. A receipt upon request.

B. Effective December 1, 2004, the information including in subsection A shall be posted in each taxicab in plain view of all passengers, and shall include the telephone number of the transportation licensing commission. (Amdt. 1 with Ord. BL2004-351 § 1, 2004)

6.72.440 Inspectors to observe conduct—Reporting or citing violations.

The taxicab inspectors of the metropolitan government are authorized and shall observe and evaluate the conduct of holders of certificates of public convenience and necessity and drivers operating under this chapter. Upon discovering a violation of the provisions of this chapter, the inspector shall either report the same to the metropolitan transportation licensing commission, which shall order or take appropriate action, or issue a citation as authorized under 6.72.500. (Ord. BL2000-325 § 1 (part), 2000)

6.72.450 Contract rates.

Nothing contained herein shall prevent a holder of a certificate of public convenience and necessity from making a contractual agreement with a company, agency, or organization to furnish transportation for employees, associates, clients, customers or members at a rate that is based on mileage, number of passengers, number of service hours, number of trips, number of passenger hours, weekly or monthly fees, or any other reasonable and calculable basis, irrespective of the mileage charges, minimum charges, and waiting charges contained in this chapter or the certificate holder's filed rates for ordinary radio-dispatch, taxicab stand, personal call or hailed service. Such a contractual agreement that provides for rates that differ from the rates ordinarily charged by the taxicab operator must be recorded upon a written document that is legally executed by all parties and kept on file at the certificate holder's place of business subject to inspection at any reasonable time by the metropolitan transportation licensing commission. (Ord. BL2000-325 § 1 (part), 2000)

Article IV. Violations—Civil Penalty Schedules

6.72.500 Violation—Penalties.

A. For any person or persons electing to plead guilty and pay a civil penalty for the violation of the following sections, subsections, or for violation of any section not otherwise specifically addressed within this section, prior to the court date, the civil penalty for the conviction of a first violation of such section or subsection within a twelve-month period shall be twenty-five dollars, and the civil penalty for the conviction of a second violation within twelve months shall be fifty dollars. The penalty for the conviction of a third violation within twelve months shall be set by the court in accordance with Section 1.01.030 of this code:

Section 6.72.070 Taxicab sticker—required;

Section 6.72.100 Driver's permit—required;

Section 6.72.170 Display of driver's permit;

Section 6.72.175 Company affiliation;

Section 6.72.185 Revocation of Tennessee driver's license;

Section 6.72.240 Inspection and maintenance of vehicles—required;

Section 6.72.250 Rate schedule card displayed—required;

Section 6.72.260 Rate changes—display in vehicle—required;

Section 6.72.270 Receipts upon request—required;

Section 6.72.290 Accident reports—required;

Section 6.72.365 Disposition of disorderly passengers;

Section 6.72.405 Map requirement;

Section 6.72.410 Toplight required;

Section 6.72.415 Driver appearance requirements;

Section 6.72.420 Advertising on vehicles—bumper stickers prohibited.

B. The civil penalty for violation of any of the following sections or subsections shall be set by the court in an amount not to exceed five hundred dollars:

Section 6.72.020 Required (Certificate of Public Convenience and Necessity);

Section 6.72.050 Proof of financial responsibility required;

Section 6.72.200 Company name and vehicle number—required;

Section 6.72.210 Liability insurance—required;

Section 6.72.220 Duty to render service—required when;

Section 6.72.230 Daily manifests—required;

Section 6.72.245 Vehicle age limit;

Section 6.72.265 Taximeters—operation and annual inspection—required;

Section 6.72.280 Operating records and receipts maintained—required;

Section 6.72.300 Taxicab stands—prohibited vehicles;

Section 6.72.310 Taxicab stands—prohibited conduct;

Section 6.72.320 Exceeding vehicle passenger capacity;

Section 6.72.340 Improper receipt or discharge of passengers;

Section 6.72.360 Refusal to carry orderly passengers;

Section 6.72.370 Soliciting passengers;

Section 6.72.390 Soliciting business;

Section 6.72.400 Prohibited manner of soliciting;

Section 6.72.430 Prohibited acts by driver.

C. The court may use the aforementioned schedule as a guide in setting penalties in accordance with Section 1.01.030 for any person or persons who appear to contest any violation of this chapter of the code. (Ord. BL2000-325 § 1 (part), 2000)

Chapter 6.76

WEIGHTS AND MEASURES

Sections:

6.76.010 Standards.
6.76.020 Officers established—Powers and duties.
6.76.030 Weighmaster—Bond required.
6.76.040 Table of weights and measures.
6.76.050 Weighing and measuring devices—Reporting sales.
6.76.060 Weighing and measuring devices—Annual testing.
6.76.080 Location of scales in retail stores.
6.76.090 Inspection of devices—Adjustment and replacement.
6.76.100 Inspection records and reports.
6.76.110 Refusal to permit testing—Tampering with device.
6.76.120 Inaccurate or unapproved devices—Confiscation authority.
6.76.130 False certificates.
6.76.140 Reweighing or remeasuring.
6.76.150 Commodities sold by weight only—Exceptions.
6.76.160 Containers—Net contents and weight statements.
6.76.170 Coal sold by weight.
6.76.180 Ice sold from vehicles—Scale required.
6.76.190 Petroleum products sales—Tolerances allowed.
6.76.200 Motortruck scales required when.
6.76.210 Licensed weigher—Required when—Application for appointment.
6.76.220 Licensed weigher—Appointment—Bond and certificate.
6.76.230 Licensed weigher—Oath.
6.76.240 Licensed weigher—Issuance of certificate.
6.76.250 Licensed weigher—Revocation of license.
6.76.260 Sales, weight and delivery tickets—Coal and fuel products regulations.
6.76.270 Coal sales—Licensed weigher required when—Certificate.
6.76.280 Short loads—Violation, liability and enforcement.
6.76.290 Carload or bargeload shipments—Certain provisions not applicable.
6.76.300 Brakes inspection required when.

6.76.010 Standards.

The standards of weights and measures of solids, liquids and dry commodities for the metropolitan government shall be under the same standards of weights and measures provided by the Federal Bureau of Standards, and designated as follows:

> "United States Department of Commerce, Daniel C. Roper, Sec'y., NATIONAL BUREAU OF STANDARDS, Lyman G. Briggs, Director, National Bureau of Standards Handbook H22, Superseding Handbook M85, Specifications, Tolerances, and Regulations for Commercial Weights and Measures and Weighing and Measuring Devices. (Issued Feb. 3, 1939)"

(Prior code § 42-1-1)

6.76.020 Officers established—Powers and duties.

A. There shall be a sealer of weights and measures, deputy sealers of weights and measures and a weighmaster of the metropolitan government, which officers are vested with police power for the enforcement of all ordinances and laws, state and municipal, that pertain to their duties, but none other. The officers shall be under civil service, shall take the usual oath for officers for the faithful performance of their duties and shall give bond in the sum of one thousand dollars for the safekeeping of property committed to their care. The metropolitan government shall pay the premium of the bond for such officers.

B. The weighmaster shall write a legible handwriting. He shall be able to keep files and records, and shall make reports in his own handwriting to the director of the division of purchase each week, the time allowed for these reports being not later than Monday of the following week. He shall also make bond in an indemnity insurance company for not less than one thousand dollars for the faithful performance of his duties and the accounting of moneys handled by him. The metropolitan government shall pay the premium of the bond for the weighmaster.

C. The deputy sealers of weights and measures shall perform such duties as shall be designated by the sealer of

weights and measures. (Ord. 89-1038 § 2, 1989; prior code § 42-1-2)

6.76.030 Weighmaster—Bond required.

A bond shall be executed by the metropolitan weighmaster for five hundred dollars for the faithful performance of his duties as such. The metropolitan government shall pay the premium of the bond for the weighmaster. (Prior code § 42-1-3)

6.76.040 Table of weights and measures.

The following shall be the legal and uniform standard of weights and measures in the metropolitan government for the sale and purchase of the following named products of the farm, orchard and garden, and articles of merchandise:

Apples, green	125 lbs. per bbl.
Apples, green	50 lbs. per bush.
Apples, dried	24 lbs. per bush.
Apple seed	40 lbs. per bush.
Blue grass seed	14 lbs. per bush.
Beans, dried	60 lbs. per bush.
Beans, green, in pods	30 lbs. per bush.
Beans, green, in pods	75 lbs. per bbl.
Beans, castor	46 lbs. per bush.
Beets	50 lbs. per bush.
Blackberries	48 lbs. per bush.
Blackberries, dried	28 lbs. per bush.
Bran	20 lbs. per bush.
Broom corn seed	42 lbs. per bush.
Buckwheat	48 lbs. per bush.
Barley	48 lbs. per bush.
Beef, net	200 lbs. per bbl.
Carrots	50 lbs. per bush.
Cabbage	50 lbs. per bush.
Cherries, with stems	56 lbs. per bush.
Cherries, without stems	64 lbs. per bush.
Corn, shelled	56 lbs. per bush.
Corn, in ear, shucked	70 lbs. per bush.
Corn, in ear, with shucks	74 lbs. per bush.
Corn, green, with shucks	100 lbs. per bush.
Corn, green, with shucks	250 lbs. per bbl.
Corn, matured, with shucks	350 lbs. per bbl.
Corn, pop	70 lbs. per bush.
Cornmeal, unbolted	48 lbs. per bush.
Cornmeal, bolted	48 lbs. per bush.
Cucumbers	48 lbs. per bush.
Chestnuts	50 lbs. per bush.
Cement	80 lbs. per bush.
Coke	40 lbs. per bush.
Charcoal	22 lbs. per bush.
Coal, stone	80 lbs. per bush.
Canary seed	60 lbs. per bush.
Clover seed, red and white	60 lbs. per bush.
Cotton seed	28 lbs. per bush.
Delinted cotton seed	33 1/3 lbs. per bush.
Flax seed	56 lbs. per bush.
Flour	196 lbs. per bbl.
Fish	200 lbs. per bbl.
Gooseberries	48 lbs. per bush.
Grapes, with stems	48 lbs. per bush.
Grapes, without stems	60 lbs. per bush.
Horseradish	50 lbs. per bush.
Hickory nuts	50 lbs. per bush.
Hair, plastering	8 lbs. per bush.
Hominy	62 lbs. per bush.
Hungarian seed	48 lbs. per bush.
Hemp seed	44 lbs. per bush.
Kobe lespedeza, common and 76 lespedeza seed	25 lbs. per bush.
Korean lespedeza seed	40 lbs. per bush.
Land plaster	100 lbs. per bush.
Lime, unslaked	80 lbs. per bush.
Lime, slaked	40 lbs. per bush.
Liquids	42 gals. per bbl.
Melon, cantaloupe	50 lbs. per bush.
Melon, cantaloupe	125 lbs. per bbl.
Millet, German, seed	50 lbs. per bush.
Millet, Missouri	50 lbs. per bush.
Millet, Tennessee	50 lbs. per bush.
Orchard grass seed	14 lbs. per bush.
Osage orange seed	33 lbs. per bush.
Oats, seed	32 lbs. per bush.
Onions, matured	56 lbs. per bush.
Onions, top buttons	28 lbs. per bush.
Onions, button, sets	32 lbs. per bush.
Parsnips	50 lbs. per bush.
Peas, dry	60 lbs. per bush.
Peas, green, in hull	30 lbs. per bush.
Peas, green, in hull	75 lbs. per bbl.
Peaches, matured	50 lbs. per bush.
Peaches, dried	26 lbs. per bush.
Pears, matured	56 lbs. per bush.
Pears, dried	26 lbs. per bush.
Plums	64 lbs. per bush.
Pie plant	50 lbs. per bush.
Potatoes, Irish	150 lbs. per bbl.
Potatoes, Irish	60 lbs. per bush.
Potatoes, sweet	50 lbs. per bush.
Potatoes, sweet	125 lbs. per bbl.
Peanuts	23 lbs. per bush.
Pork, net	200 lbs. per bbl.
Quinces, matured	48 lbs. per bush.

Raspberries	48 lbs. per bush.
Redtop seed	40 lbs. per bush.
Rye seed	56 lbs. per bush.
Rye grass (Italian) seed	40 lbs. per bush.
Sage	4 lbs. per bush.
Salt	50 lbs. per bush.
Sorghum molasses	12 lbs. per gal.
Sorghum seed	50 lbs. per bush.
Strawberries	48 lbs. per bush.
Salad, turnips, kale	30 lbs. per bush.
Salads, mustard, spinach	30 lbs. per bush.
Turnips	125 lbs. per bbl.
Turnips	50 lbs. per bush.
Tomatoes	56 lbs. per bush.
Timothy seed	45 lbs. per bush.
Velvet grass seed	7 lbs. per bush.
Walnuts	50 lbs. per bush.
Wheat	60 lbs. per bush.

(Prior code § 42-1-4)

6.76.050 Weighing and measuring devices—Reporting sales.

Any person engaged in the business of selling weighing or measuring devices shall report all sales of such devices for use in the metropolitan government area, within three days after the sale thereof, to the sealer of weights and measures. (Prior code § 42-1-5)

6.76.060 Weighing and measuring devices—Annual testing.

The sealer of weights and measures or the weighmaster shall, not less than once a year, test the accuracy of all weighing and measuring devices in use in the metropolitan government area and shall stamp them after inspection. (Prior code § 42-1-6)

6.76.080 Location of scales in retail stores.

All scales used in retail stores shall be so located that the weight indication of the scale is in plain view and readable by the buyer. No article shall be so placed as to obstruct such view. (Prior code § 42-1-14)

6.76.090 Inspection of devices—Adjustment and replacement.

The sealer of weights and measures of the weighmaster may inspect, during regular business hours, any place where scales or weights and measures are used. If any scales or weights and measures are found to be defective or inaccurate, they shall be either adjusted or replaced. The sealer of weights and measures shall be the sole judge of whether they shall be replaced or adjusted. (Prior code § 42-1-8)

6.76.100 Inspection records and reports.

The sealer of weights and measures or the weighmaster shall keep records of the date, proprietor, street number or peddler's license number, truck, scale or measure which has been inspected. Reports shall be made monthly to the purchasing agent of such matters of record as may be required by the purchasing agent; and, in addition, reports summarizing the annual activities of the division of weights and measures shall be made to the purchasing agent. (Prior code § 42-1-10)

6.76.110 Refusal to permit testing—Tampering with device.

It is unlawful for any person to refuse to permit the sealer of weights and measures or weighmaster to test or verify his measures, scales, weights or devices at any reasonable hour, or to change or tamper with any device for weighing and measuring after the same has been tested and sealed by the sealer of weights and measures. (Prior code § 42-1-9)

6.76.120 Inaccurate or unapproved devices—Confiscation authority.

After any measure or weight has been disapproved or any appliance which makes erroneous calculations or erroneous measurements has been found to be so inaccurate, it is unlawful to retain the possession and continue the use of such article. The sealer of weights and measures may confiscate and destroy or hold for evidence such false measures or weights. (Prior code § 42-1-11)

6.76.130 False certificates.

It is unlawful for any dealer in any commodity to issue a false certificate for any weight in dry or liquid measure. (Prior code § 42-1-12)

6.76.140 Reweighing or remeasuring.

The sealer of weights and measures or weighmaster shall have the right to have any commodity, the weighing or measuring of which is provided for in this chapter and Chapter 6.68, to be reweighed or remeasured; and it is unlawful for the dealer to refuse to submit to a request for such action. The sealer of weights and measures and the weighmaster shall have the right to require coal, coke, sand, gravel or any commodity sold in truck lots to be reweighed on the public scales. (Prior code § 42-1-13)

6.76.150 Commodities sold by weight only—Exceptions.

It is unlawful to sell at retail, except by weight, the following items: beef, pork, mutton and all other meats, fowl,

fish, flour, sugar, meal, lard, vegetable compounds and all other substitutes for lard, butter and butter substitutes and any and all types and kinds of fruits and vegetables, except the following items, which may be sold by the bunch, weight or piece: lettuce, celery, cauliflower, fresh pineapple, radishes, carrots, fresh onions with tops, fresh turnips with green tops, fresh corn, broccoli, eggplant, avocado pears, cantaloupes, watermelons, honeydew melons, honeyball melons, collards, artichokes, lemons, oranges, grapefruit and tangerines. (Prior code § 42-1-15)

6.76.160 Containers—Net contents and weight statements.

The net contents of all commodities sold in containers or boxes shall be plainly printed or stenciled on such containers or boxes, or on tags firmly attached to such containers or boxes, expressed in terms of the exact net weight of the contents. It is unlawful for any person to sell or offer for sale, at wholesale or retail, display, advertise or otherwise represent such net weight erroneously and falsely. (Prior code § 42-1-16)

6.76.170 Coal sold by weight.

No person shall sell any coal in the metropolitan government area except by actual weight in the manner provided in this chapter and Chapter 6.68, nor unless such coal, prior to its delivery, shall have been weighed by a licensed weigher. (Ord. 89-1038 § 3, 1989; prior code § 42-1-17)

6.76.180 Ice sold from vehicles—Scale required.

A. It is unlawful for any person to sell ice from wagons or other vehicles without having in or attached to such vehicles scales by which accurate and correct weights may be made of ice sold therefrom.

B. It is the duty of any person selling ice from such vehicles, upon demand of the purchaser of such ice that the same be weighed and reweighed, to weigh or reweigh the same, and to charge only for the actual weight of the ice delivered. (Prior code § 42-1-31)

6.76.190 Petroleum products sales—Tolerances allowed.

A. In the sale of gasoline, kerosene, benzene, cleaning fluids or like fluids, the tolerance shall be one cubic inch per gallon.

B. For other petroleum products, meaning fuel oil, motor oil and like products, the tolerance shall be:

In quantities of less than one gallon	1 1/2%
From one to fifteen gallons	1%
Over fifteen gallons	.1%

(Prior code § 42-1-30)

6.76.200 Motortruck scales required when.

A. Any person engaged in the business of buying and selling heavy commodities, such as coal, ice, sand, gravel or commodities of like character, shall install motortruck scales under specifications approved by the sealer of weights and measures.

B. A copy of the plans, specifications and blueprints of such motortruck scales shall be submitted to the sealer of weights and measures for approval before any such scales may be installed.

C. The sealer of weights and measures shall supervise the installation of the scales, and it is unlawful to use such scale until the same is tested, approved and sealed by the sealer of weights and measures. (Prior code § 42-1-18)

6.76.210 Licensed weigher—Required when—Application for appointment.

A. Every dealer in coal, coke, brickettes, sand, gravel, scrap iron and other heavy commodities, where there are motortruck scales to be used for weighing the same, shall have a licensed weigher appointed to be employed by such owner or dealer.

B. Any person desiring appointment as a licensed weigher shall fill out a blank application furnished by the sealer of weights and measures, which shall be approved by him prior to the appointment and qualification. (Prior code § 42-1-19)

6.76.220 Licensed weigher—Appointment—Bond and certificate.

A. Upon nomination by the dealer, the sealer of weights and measures shall have the power to appoint such persons as he deems necessary and proper to effectively carry out the provisions of this chapter and Chapter 6.68 to act as licensed weighers. The appointees shall, prior to their appointment, fill out and file an application for appointment as such and, before assuming the obligations of the office of licensed weigher, execute and deliver to the metropolitan government a bond in the penal sum of one thousand dollars for the faithful performance of their duties as such licensed weighers, upon forms prepared and approved by the department of law of the metropolitan government. Such bond shall be signed by the dealer employing such licensed weigher.

B. The bond shall guarantee the faithful performance of the licensed weigher's duties. Incorrect weights shall be considered a violation of the obligation of the bond, and the violator shall also be subject to having his certificate revoked for not less than six months.

C. The sealer of weights and measures shall issue to each licensed weigher a certificate upon his having qualified, stating the name and location of the dealer's place of business. (Prior code § 42-1-20)

6.76.230 Licensed weigher—Oath.

No person shall act as a licensed weigher until he shall have taken an oath before the sealer of weights and measures that he understands the act and business of weighing coal, ice, sand, gravel or commodities of like character, that he will faithfully and impartially discharge all the duties that may be required of him as a licensed weigher of such commodities by the metropolitan government and that he will comply with all the laws in force with regard to the weighing of such commodities and all laws that may be hereafter enacted with reference to such. (Prior code § 42-1-21)

6.76.240 Licensed weigher—Issuance of certificate.

Whenever the bond required by Section 6.76.220 shall have been given and the oath shall have been taken, the sealer of weights and measures shall issue to such licensed weigher a certificate stating that the bond has been furnished and the oath taken as required by law and that such person is authorized to act as a licensed weigher. (Prior code § 42-1-22)

6.76.250 Licensed weigher—Revocation of license.

In the event any licensed weigher shall violate the provisions of this chapter and Chapter 6.68, the sealer of weights and measures shall investigate such violation, and if it is found that the weigher has in fact violated the provisions of this chapter and Chapter 6.68, the license issued to him shall be revoked. (Prior code § 42-1-23)

6.76.260 Sales, weight and delivery tickets—Coal and fuel products regulations.

A. Any person with a fixed place of business selling coal or fuel products, coke, charcoal or briquette, sand, gravel and crushed stone, to be delivered in the metropolitan government area, shall provide the driver of the delivery vehicle with a ticket bearing the names of the seller, driver and weigher, description of the commodity, gross weight, tare weight, net weight and the name and address of the purchaser.

B. All sales of coal shall be made by the ton or fraction thereof, and a ton shall consist of two thousand pounds actual weight. Coal and other fuel products may be sold in bags or sacks, provided the net weight of the contents is clearly stenciled on the bag or written on a tag attached thereto; provided, that when, because of national emergency or other generally recognized economic condition, it becomes impossible to procure bags or sacks on the open market, wood or metal hampers may be used in lieu of bags or sacks when such wood or metal hampers have been approved for use by the sealer of weights and measures, who is authorized to select a stamp or other suitable method for identifying such approved hamper.

C. In the sale of these articles, a hundred weight shall consist of one hundred pounds avoirdupois, and a ton shall consist of two thousand pounds weight. All persons not maintaining a place of business for the sale of these articles, who shall make deliveries within the metropolitan government area, shall provide the driver of the conveyance with a weight certificate to be issued by a licensed weigher, showing that such load has been weighed by the licensed weigher, and this certificate shall show gross, tare and net weight. A copy of this ticket shall be delivered to the purchaser, together with a delivery ticket showing the seller, driver, name of purchaser and description of load. (Ord. 89-1038 § 4, 1989; prior code § 42-1-24)

6.76.270 Coal sales—Licensed weigher required when—Certificate.

A. It is unlawful for any person dealing in coal to sell as much as one-half ton thereof in the metropolitan government area unless the same shall have been weighed by a licensed weigher engaged or in the employ of such person.

B. The weigher shall issue, on regular blanks, a certificate showing the weight of the vehicle, the net weight and amount of the coal, the name of the dealer and the name of the driver of the vehicle, together with the date when such coal is weighed. The certificate shall be delivered to the driver of the vehicle in which the coal is to be delivered.

C. It shall be the duty of the driver to safely keep such certificate and deliver the same to the person to whom such coal is to be delivered, or to his agent, and the driver shall not deliver such coal or unload the same until the certificate shall be signed by such purchaser or his agent or unless, after a reasonable search, such person or his agent cannot be found. (Prior code § 42-1-25)

6.76.280 Short loads—Violation, liability and enforcement.

A. Any person believing that any load of coal, ice, sand, gravel or commodities of like character offered to be delivered to him does not weigh as much as the ticket represents shall have the same weighed at the nearest licensed scale and take a certificate of the weight, and if it shall be found that the load is as much as fifty pounds

short in the weight or as much as fifty pounds less weight than represented by the ticket, the dealer so offering to sell such coal, ice, sand, gravel or commodities of like character shall be punished as provided in Section 1.01.030; but if it turns out in the weighing of such a load that it is not deficient in weight, then the person having the same weighed shall be liable to the dealer for the cost of weighing the same.

B. The sealer of weights and measures and the police department are empowered, at any time, to require the driver of any vehicle containing coal, ice, sand, gravel or commodities of like character to drive the same to the nearest licensed scale, for the purpose of having such commodity weighed. It shall be the duty of the sealer of weights and measures, from time to time, indiscriminately, to have vehicles carrying heavy commodities weighed for the purpose of enforcing the terms of this chapter and Chapter 6.68. (Ord. 95-1329 § 2 (part), 1995; Ord. 89-1038 § 5, 1989; prior code § 42-1-26)

6.76.290 Carload or bargeload shipments—Certain provisions not applicable.

Sections 6.76.170 and 6.76.200 through 6.76.280 shall not apply to materials sold in carload or bargeload lots, but the provisions now pertaining to gauging the same shall apply. (Prior code § 42-1-27)

6.76.300 Brakes inspection required when.

When coal, coke, stone, gravel and other heavy commodities are sold by persons not regularly engaged and maintaining a place of business for such purpose within the metropolitan government area who make deliveries of the same within the metropolitan government area, such persons shall not haul such heavy commodities over the streets, alleys and highways unless the vehicle in which same is being hauled shall have had its brakes inspected and approved within ten days of such haul, such inspection to be at the approval of the sealer of weights and measures or the weighmaster. (Prior code § 42-1-29)

Chapter 6.80

WRECKER AND TOWING SERVICES

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6.80.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Cruising" means the driving of a wrecker on the streets, alleys, roads, highways and thoroughfares within the area of the metropolitan government in a fashion or manner calculated for the purpose of soliciting business.

"Driver" means any person driving a wrecker on the streets, alleys, roads, highways and thoroughfares within the area of the metropolitan government.

"Driver helper" means any person riding with a driver or assisting him in the operation of the wrecker on the streets, alleys, roads, highways and thoroughfares within the area of the metropolitan government.

"Driver's permit" means a permit required and issued by the transportation licensing commission to a driver or driver helper in order to drive or ride in a wrecker on the streets, alleys, roads, highways or thoroughfares within the area of the metropolitan government.

"Emergency wrecker service" means the removal of motor vehicles from the streets, alleys, roads, highways and thoroughfares within the area of the metropolitan government when there is an emergency situation as defined by Section 6.80.510.

"License" means a license issued by the transportation licensing commission authorizing the holder thereof to engage in the business of towing, transporting, conveying or removal of vehicles from one point to another within the area of the metropolitan government. A license can either authorize the holder thereof to engage in the business of providing wrecker services or emergency wrecker services.

"Nonconsent tow" or "nonconsent towing" is towing without the prior consent or authorization of the owner or operator of the vehicle to be towed. Typically, it is categorized as police or trespass towing.

"Rate card" means a card issued by the transportation licensing commission for display in each emergency wrecker which contains the mandatory maximum fees or charges then in effect.

"Rates and charges" mean any charges assessed for transporting, towing, conveying or storing a vehicle by an emergency wrecker service.

"Transportation licensing commission" means the transportation licensing commission of the metropolitan government created and existing by virtue of the metropolitan code of laws, Sections 2.100.010 through 2.100.060 and is referred to in this chapter as the "commission."

"Unauthorized vehicle" means a vehicle parked on private property without the consent of the owner of the property or his agent or the lessee of the property.

"Wrecker" means a motor vehicle constructed on a truck chassis with lifting devices operated by mechanical power and employed or used for the purpose of towing, transporting, conveying or removing any and all kinds of vehicles which are unable to be or actually are not operated under their own power.

"Wrecker permit" means a permit required and issued by the commission to a licensee for each wrecker operated by the licensee under the authority of a license.

"Wrecker service" means the towing, transporting, conveying or removal of vehicles from one point to another within the area of the metropolitan government. (Ord. BL2000-247 §§ 1, 2, 2000; Ord. 96-612 § 1 (part), 1996)

6.80.020 Purpose and intent of provisions.

It is declared to be the purpose and intent of this chapter that all wreckers, towing services and wrecker services doing business within the area of the metropolitan government be licensed and required to have adequate insurance coverage in force as set out in this chapter for the protection and welfare of the public. The provisions of this chapter shall not apply to a wrecker service located outside the area of the metropolitan government and which occasionally passes through or delivers vehicles within the area of the metropolitan government, unless such wrecker service both picks up and delivers such vehicle within the

area of the metropolitan government. (Ord. 96-612 § 1 (part), 1996)

6.80.040 Assistance in enforcement by police officers.

Officers of the department of metropolitan police shall have authority to enforce this chapter. A police officer, upon observing a violation of this chapter or of any regulation established by the director pursuant to this chapter, shall take necessary enforcement action to insure effective regulation of vehicle tow services and vehicle storage facilities. (§ (1) of Amdt. 1 to Ord. BL2000-247, 4/18/00; Ord. BL2000 § 3, 2000)

Article I. License for Operation

6.80.110 License required to provide wrecker service.

No person shall engage in the business of providing wrecker services within the area of the metropolitan government without first obtaining and keeping in force a license from the commission to operate a wrecker service as set out in Section 6.80.150 or a license to operate an emergency wrecker service as set out in Section 6.80.525. (Ord. 96-612 § 1 (part), 1996)

6.80.120 Applications—Conditions.

A. Any person desiring to engage in the business of providing wrecker services within the area of the metropolitan government shall make application to the commission, which application shall be upon forms to be adopted and provided by the commission. The completed application must contain all the information required by such form and must be verified under oath.

B. The form to be adopted and provided by the commission shall require such information as the commission determines to be necessary and proper, including, but not limited to, the following:

1. The full name and address of the person, firm or corporation desiring to obtain a license and whether he is the owner, lessee or bailee of the proposed towing or wrecker operation;

2. A description of each wrecker including the make, model, year of manufacture, Tennessee license number for the current year, motor and chassis number and the length of time each wrecker has been in use. No license authorized hereunder shall be issued or become effective until the applicant has furnished the commission an application which identifies each wrecker to be used in the proposed towing and wrecker operation;

3. If the applicant intends to use the wrecker of another person or licensee on a part-time or full-time basis, that fact must also be stated;

4. The location and description of the place and premises from which the applicant intends to operate a wrecker service;

5. The names and addresses of at least two references as to the applicant's financial responsibility;

6. That the applicant is of good moral character and is ready, willing and able to comply with all the laws of the metropolitan government, the state of Tennessee, the United States and the rules and regulations of the commission;

7. That the applicant will list with the commission the names, home addresses and ages of all employees to be used or employed by the applicant in the business of providing a wrecker service, with the exception of part-time or emergency employees whose names will be furnished once a month. The applicant will update the list upon each renewal of his license;

8. That the applicant will set forth and describe the available space where the applicant intends to properly accommodate and protect all vehicles to be towed, transported or otherwise removed;

9. That the applicant will take out and maintain in full force and effect such policies of insurance as are herein required;

10. The applicant will comply with the mandatory rates and charges as herein provided and as may hereafter be adopted by the commission for all nonconsent tows. (§ (2) of Amdt. 1 to Ord. BL2000-247, 4/18/00; Ord. BL2000-247 § 4, 2000; Ord. 96-612 § 1 (part), 1996)

6.80.130 Making false statement—Power not to grant application.

Any person making a false statement in any application required by the commission shall forfeit his license or permit and shall not be eligible to receive or hold a license or permit from the commission for a period of ten years. The commission shall have the power to not issue any license or permit when it finds that such issuance would interfere with the public health, safety and welfare of this community. (Ord. 96-612 § 1 (part), 1996)

6.80.140 Liability insurance required.

A. No license to operate a wrecker service shall be issued, become effective or continue in force and effect unless there is in full force and effect a liability insurance policy covering the licensee and his towing and wrecker operation with not less than a three hundred thousand dollar single limit. Such liability insurance policy shall be with an insurance company authorized to do business in

Tennessee and approved by the commission and shall be filed with the secretary of the commission.

B. In addition to the requirements in subsection A of this section, the applicant for a license, prior to the issuance and effective date thereof, shall take out and maintain during the term of the license a policy of garage keeper's legal liability insurance covering fire, theft, explosion and collision in an amount of not less than fifty thousand dollars.

C. The liability insurance policies required in this section shall name the metropolitan government as an additional insured.

D. Those licensed to operate a wrecker service shall comply with the insurance requirements contained in Section 6.80.145 if they make nonconsent tows. (Ord. BL2000-247 § 5 (part), 2000; Ord. 96-612 § 1 (part), 1996)

6.80.145 Liability insurance required—Emergency wrecker service and nonconsent tows.

A. No license to operate an emergency wrecker service shall be issued, become effective or continue in force and effect unless there is in full force and effect a liability insurance policy covering the licensee and his towing and wrecker operation with not less than a five hundred thousand dollar single limit. Such liability insurance policy shall be with an insurance company authorized to do business in Tennessee and approved by the commission and shall be filed with the secretary of the commission.

B. In addition to the requirements in subsection A of this section, the applicant for a license, prior to the issuance and effective date thereof, shall take out and maintain during the term of the license a policy of garage keeper's legal liability insurance covering fire, theft, explosion and collision in an amount not less than one hundred thousand dollars.

C. The liability insurance policies required in this section shall name the metropolitan government as an additional insured.

D. Those licensed to operate a wrecker service shall comply with the insurance requirements contained in this section if they make nonconsent tows. (Ord. BL2000-247 § 5 (part), 2000; Ord. 96-612 § 1 (part), 1996)

6.80.150 License—Issuance and contents.

A. If after the hearing provided for in Section 6.80.610, the commission finds upon examination that the applicant is capable, willing and qualified to provide a wrecker service and can conform to the laws of the metropolitan government, the state of Tennessee, the United States and the rules and regulations of the commission; then, the commission may grant and issue to such applicant a license to operate a wrecker service; otherwise, the application shall be denied.

B. Such license shall state the name and address of the licensee, the number of wreckers authorized upon such license, the date of issuance and such other information as the commission determines to be necessary and proper. (Ord. 96-612 § 1 (part), 1996)

6.80.160 License—Fees, expiration, transfer and display.

A. A license issued by the commission to any person permitting such person to operate a wrecker service shall be issued for a period of one year at a fee of one hundred dollars.

B. A license issued hereunder shall not be sold, assigned, mortgaged or otherwise transferred without commission approval and shall expire immediately upon the licensee terminating the wrecker service or upon revocation by the commission.

C. A current license issued by the commission shall be prominently and conspicuously displayed at all times upon the premises from which the licensee operates his wrecker service. (Ord. BL2000-247 § 6, 2000; Ord. 96-612 § 1 (part), 1996)

6.80.170 Nonconsent tows.

A. No one authorized to operate a wrecker service shall make nonconsent tows until written notification of intent to make nonconsent tows or engage in nonconsent towing has been on file with the commission for at least seventy-two hours.

B. Anyone authorized to operate a wrecker service who makes nonconsent tows shall comply with all the requirements contained herein which those furnishing emergency wrecker services are required to comply with except those requirements contained in Sections 6.80.520(B)(2) and 6.80.535.

C. Private Property Towing Authorization. Wrecker service operators shall comply with all federal, state and local laws concerning the towing of vehicles from private property. (Ord. BL2000-247 § 7, 2000; Ord. 96-612 § 1 (part), 1996)

6.80.175 Police department impound lot notification requirements.

The towing of any vehicle without the consent of the owner must be reported to the metropolitan police department within one hour of the completion of the towing of the vehicle. (Ord. BL2000-247 § 8, 2000)

6.80.185 Vehicle tow service requirements and records.

A. Except as otherwise provided in subsection B and C of this section, for each vehicle towed by a vehicle tow service, a licensee shall retain at the licensee's principal place of business all documents related to the towing of the vehicle along with any records pursuant to this chapter, including, but not limited to, towing agreements, written authorizations for removal, and wrecker slips or tickets. Such records shall be maintained for not less than one year from the date of removal of the vehicle. The licensee shall make the vehicle tow service records available for inspection by the commission or any designated representative at any time.

B. Upon towing of any vehicle by a wrecker service, the wrecker service shall maintain records which shall include the following information:

1. The date and time the call was received by the wrecker service;
2. The name of the caller;
3. The date and time of initial towing;
4. The place of initial towing;
5. The date and time of arrival at the impound lot;
6. The MPD impound lot control/notification number;
7. The date and time of release to the owner;
8. The name of the wrecker driver and helper; and
9. The name of the person authorizing towing action.

C. The records required by subsection B of this section shall be maintained at a location where the vehicle is stored until the vehicle is recovered. Thereafter such records shall be stored at a location within the Metropolitan Nashville area where members of the public may obtain such information by telephone or in person during regular business hours. Further, all wrecker services, public and private, which tow impounded vehicles, shall register with the metropolitan transportation licensing commission and metro impound lot, as set forth in subsection A of this section, the current telephone number of the person responsible for releasing vehicles on their behalf.

D. A person desiring to engage in vehicle tow service shall register with the director of the metropolitan transportation licensing commission a trade name that clearly differentiates the person's company from all other companies engaging in vehicle tow services and shall use no other trade name in conducting vehicle tow services. (Ord. BL2000-247 § 9, 2000)

6.80.190 Payment of fee.

The licensee shall provide a vehicle owner the option of paying the fee for vehicle tow service by cash, debit card or major credit card, except the fee to drop vehicles before departing which fee may be paid by cash or major credit card. In addition to the aforesaid payment options, a licensee may accept payment by check. For purposes of this subsection, the term "major credit card" means a Visa, MasterCard, American Express, Discover and Diner's Club card. The director shall transmit a copy of this subsection to each wrecker service provider. (§ (3) of Amdt. 1 to Ord. BL2000-247, 4/18/00; Ord. BL2000-247 § 10, 2000)

Article II. Permits for Wreckers

6.80.210 Permit required for wreckers.

No licensee shall allow a wrecker to be used in his business without first obtaining and keeping in force a wrecker permit for the wrecker. (Ord. 96-612 § 1 (part), 1996)

6.80.220 Issuance—Contents.

A. If, after the inspection required in Section 6.80.420, the commission finds that a wrecker conforms to the provisions of this chapter and the rules and regulations of the commission, the commission shall issue to the licensee a wrecker permit for the wrecker; otherwise, the permit shall be denied.

B. Such wrecker permit shall state the name and address of the licensee, the date of issuance and such other information as the commission determines to be necessary and proper. (Ord. 96-612 § 1 (part), 1996)

6.80.230 Wrecker permit—Fees, transfer, expiration and display.

A. A wrecker permit shall be issued for each general wrecker for a period of one year or any part thereof at a fee of thirty-five dollars.

B. A wrecker permit issued hereunder shall not be sold, assigned, mortgaged or otherwise transferred from one licensee to another and shall expire immediately upon the licensee terminating the wrecker service or on revocation by the commission. A wrecker permit may be transferred from one wrecker of the licensee to another wrecker of the licensee in accordance with the rules and regulations of the commission whenever a wrecker is taken out of service or exchanged for another.

C. A current wrecker permit issued by the commission shall be subject to the provisions of this chapter and the rules and regulations of the commission and shall be prominently and conspicuously displayed at all times in the wrecker of the licensee for which it was issued. (Ord. 96-612 § 1 (part), 1996)

Article III. Drivers, Driver Helpers and Employees

6.80.310 Driver's permit required for drivers and driver helpers.

Each wrecker shall be driven by a competent driver holding a current license required by the state of Tennessee to drive the wrecker. Each driver helper shall also be a competent driver holding a current license required by the state of Tennessee to drive the wrecker. Each driver and driver helper shall possess a driver's permit issued by the commission and meet such requirements, qualifications and training as the commission deems necessary for the proper and safe operation of a wrecker on the streets, alleys, roads, highways and thoroughfares within the area of the metropolitan government. (Ord. 96-612 § 1 (part), 1996)

6.80.320 Licensee responsibilities—Compliance required.

A. No licensee shall permit any of its employees while operating a wrecker to engage in activities or practices contrary to the public safety or welfare or contrary to the proper discharge of their duties in the course of their employment.

B. Each licensee shall be responsible for its employees complying with the laws of the metropolitan government, the state of Tennessee, the United States and the rules and regulations of the commission which reflect on the fitness of such employees to be employed in the operation of a wrecker service, and violations by the employees of a licensee shall be cause for revocation, suspension, probation or failure to renew the license of the licensee and the permits of the drivers or driver helpers. (Ord. 96-612 § 1 (part), 1996)

6.80.330 Driver's permit—Fees, transfers, expiration and display.

A. A driver's permit issued by the commission to a driver or driver's helper permitting such person to drive, ride in or assist in the operation of a wrecker shall be issued for a period of two years at a fee of twenty dollars, plus an additional ten dollars for an investigation of the person applying for the permit.

B. A driver's permit issued hereunder shall not be sold, assigned, mortgaged or otherwise transferred from one person to another and shall expire immediately when the permittee is no longer employed in the operation of a wrecker service as a driver or driver helper or upon revocation by the commission.

C. A current driver's permit issued by the commission shall be carried by the driver or driver helper at all times he is either driving, riding in or assisting in the operation of a wrecker. (Ord. BL2000-247 § 11, 2000; Ord. 96-612 § 1 (part), 1996)

Article IV. Equipment and Operation

6.80.410 Information required on vehicle.

Each wrecker shall bear on each side of the wrecker in painted letters or decals not less than four inches nor more than seven inches in height, the name of the entity operating the wrecker. The commission by rules and regulations may provide for the numbering of each wrecker and, if so provided by rules and regulations of the commission, the number assigned to each wrecker shall also be painted on the outside of each front door in numbers not less than four inches and not more than seven inches in height. (Ord. 96-612 § 1 (part), 1996)

6.80.415 Contracting for service with metropolitan government.

A. The metropolitan government is authorized to contract with any licensee for the payment for the towing, transporting or otherwise removing of:

1. Any abandoned, immobile or unattended motor vehicle as defined by TCA Section 55-16-103 within the area of the metropolitan government;

2. Any vehicle which the department of metropolitan police believes to be stolen in order to provide for the custody, protection and safekeeping of such vehicle until reclaimed by the true owner thereof.

B. Such contract shall be let in accordance with the established purchasing procedures and shall be subject to the laws of the metropolitan government, the state of Tennessee and the rules and regulations of the commission. Such contract shall be approved by the metropolitan department of law as to form and legality, and the metropolitan county mayor is authorized to execute such contract on behalf of the metropolitan government. (Ord. 96-612 § 1 (part), 1996)

6.80.420 Inspection and maintenance of vehicles—Compliance required.

A. 1. Prior to the time any license shall become effective and a wrecker permit issued under the provisions of this chapter, an inspection shall be made or caused to be made by the commission of each wrecker to be operated by such licensee to determine if such wrecker complies with the laws of the metropolitan government, the state of Tennessee, the United States and the rules and regulations of the commission. The rules and regulations adopted by the commission shall be promulgated to provide safe transportation of any vehicle to be towed or conveyed by the wrecker and shall specify such safety equipment and

regulatory devices as the commission shall deem necessary therefor.

2. If, upon inspection, the commission determines that a wrecker complies with applicable laws and its rules and regulations, the commission may issue a wrecker permit as herein provided. The commission shall have the right to suspend, revoke, place on probation or fail to renew such wrecker permit if, at any time, the licensee fails to maintain a wrecker in a proper condition, including the safety equipment regulatory devices required by the commission or, if he allows any driver or driver helper to operate, ride in or assist in the operation of such wrecker without first having obtained a driver's permit from the commission or, by allowing any driver or driver helper to operate a wrecker where the commission has revoked the individual's driver's permit. In causing an inspection to be made, the commission, by rules and regulations, may require a wrecker to be inspected by an agency or garage approved by the commission and may require the licensee to exhibit and file with the commission a certificate from such agency or garage that such wrecker has been inspected and meets all lawful requirements.

B. Upon the issuance of a license and one or more wrecker permits, the commission shall inspect or cause to be inspected each wrecker of the licensee at least once every six months thereafter to ensure the continued maintenance of all wreckers in compliance with applicable laws and rules and regulations of the commission. If any wrecker shall fail to meet the requirements as set out by the commission, then the commission may direct that such wrecker be removed from service and, upon failure of the licensee to so remove it, such failure shall be grounds for the revocation or suspension of the license. (Ord. 96-612 § 1 (part), 1996)

6.80.425 Minimum equipment required.

A. Each wrecker shall be equipped with and have available at all times all of the equipment which the commission may reasonably require by its rules and regulations to ensure the safe operation of the wrecker.

B. At the time of application for a license, the commission shall furnish to the applicant in writing a list of such equipment as the commission deems to be the minimum requirements for each wrecker and the licensee shall carry and have available at all times and in good working order in each of his wreckers such required equipment until a new list is furnished the licensee by the commission. The commission may furnish such new or revised list of such equipment from time to time as it deems necessary, and each licensee after being furnished same shall comply therewith. Such list of equipment shall include, but is not limited to, fire extinguishers, crowbars, shovels, brooms, axes and flags or flares. (Ord. BL2000-247 § 12, 2000; Ord. 96-612 § 1 (part), 1996)

6.80.430 Operating records.

Each licensee shall maintain or cause to be maintained such records as the commission may, by rules and regulations, require for the purpose of enforcing the provisions of this chapter and the rules and regulations of the commission. (Ord. 96-612 § 1 (part), 1996)

6.80.435 Receipts.

The driver of any wrecker shall render to the operator or owner of any vehicle to be towed a receipt for the amount charged, either by a mechanically printed receipt or by a specially prepared receipt on which shall be the name of the licensee, amount of charges and appropriate taxes, date of transaction and the mileage and type of vehicle towed. The licensee shall keep a copy of such receipts which shall be made available to the commission or its inspectors at all times. (Ord. BL2000-247 § 13, 2000; Ord. 96-612 § 1 (part), 1996)

6.80.440 Disposition of revenue.

A. The commission shall remit to the metropolitan treasurer all fees and other revenues derived from the license and permit fees collected under the provisions of this chapter and the metropolitan treasurer shall maintain an account thereof.

B. Such fees shall be remitted as required by the director of finance and the amounts so collected shall be used to defray the expenses of the commission including, but not limited to, the payment of the salaries of the commission's inspectors.

C. Payment therefrom shall be upon requisition or voucher executed by a person or persons authorized by the director of finance. (Ord. 96-612 § 1 (part), 1996)

6.80.445 Daily manifests.

Every licensee shall maintain or cause to be maintained a daily manifest upon which is recorded all vehicles transported or towed each day showing the time and place of origin and destination of each trip, mileage and type of vehicle and the amount of charge or rate. Every licensee shall retain and preserve all manifests in a safe place for at least the calendar year next preceding the current calendar year and such manifests shall be made available to the commission or its inspectors at all times. (Ord. 96-612 § 1 (part), 1996)

6.80.450 Prohibited acts.

It is declared that the following acts are prohibited and unlawful and the license or permit of any person doing any

such acts may be revoked, suspended, placed on probation or not renewed:

A. To fail to comply with all reasonable and lawful requests of the owner or operator of the vehicle to be towed as to designation;

B. To remove or transport any vehicle, the owner of which is in violation of any law of the metropolitan government or of the state of Tennessee, except by the explicit instructions of a metropolitan police officer or a state highway patrolman;

C. To disregard the instructions of any metropolitan police officer or state highway patrolman during the transportation of the vehicle to its designation;

D. To wait for employment by standing or parking upon any street, alley, road, highway or thoroughfare or upon public property;

E. To interfere with the orderly flow of traffic along the streets, alleys, roads, highways or thoroughfares, except upon the direction of a metropolitan police officer or state highway patrolman;

F. To engage in cruising, except in those places and under the circumstances which the commission by rules and regulations may permit;

G. To invite or permit loitering within or near his wrecker;

H. To transport a vehicle other than by the most direct and safest route and without delay from the point of pickup to the assigned designation;

I. To fail to comply with any of the laws of the metropolitan government, the state of Tennessee, the United States or the rules and regulations of the commission which reflect unfavorably on the fitness of the driver, driver helper or employee to be employed in the operation of a wrecker service.

Flashing Lights. Any person operating a wrecker may utilize flashing lights only when standing on the roadway for the purpose of removing a vehicle and while actually towing any vehicle. Wreckers are prohibited from using flashing lights while going or returning from the location of vehicles if not engaged in towing such vehicles. Further, the operators of tow vehicles shall observe all traffic regulations while going to or returning from the locations of vehicles or while engaged in the towing of vehicles. (Ord. BL2000-247 §§ 14, 15, 16, 2000; Ord. 96-612 § 1 (part), 1996)

6.80.460 Violations and amount of fines.

Anyone violating any of the provisions of this chapter shall upon conviction be guilty of a misdemeanor and subject to a fine of not more than five hundred dollars. Every day a violation of any provision of this chapter continues shall constitute a separate offense. (Ord. 96-612 § 1 (part), 1996)

Article V. Emergency Wrecker Service

6.80.510 Emergency situations—Purpose.

In order to regulate, facilitate and provide for the proper and orderly flow of traffic upon the streets, alleys, roads, highways and thoroughfares within the area of the metropolitan government, including the regulation and control of parking and to promote the public's safety, the following acts and circumstances are declared to constitute an emergency situation requiring the immediate removal of a vehicle from the streets, alleys, roads, highways and thoroughfares within the area of the metropolitan government:

A. When a vehicle is parked, stopped or standing in violation of any regulation or ordinance of the metropolitan government;

B. When a vehicle is parked, stopped or standing so as to obstruct the orderly flow of traffic;

C. When a vehicle is disabled by an accident and constitutes an obstruction to traffic and its immediate removal or storage for safekeeping is necessary in the interest of public safety and protection of property. (Ord. 96-612 § 1 (part), 1996)

6.80.515 License required to provide emergency wrecker service.

No person shall engage in the business of providing emergency wrecker services within the area of the metropolitan government without first obtaining and keeping in force a license to operate an emergency wrecker service from the commission. All provisions of this chapter shall apply where applicable to a person holding a license to operate an emergency wrecker service including those prohibited acts set out in Section 6.80.450. (Ord. 96-612 § 1 (part), 1996)

6.80.520 Application—Conditions.

A. Any person desiring to engage in the business of providing emergency wrecker services within the area of the metropolitan government shall make application to the commission, which application shall be upon forms to be adopted and provided by the commission. The completed application must contain all the information required by such form and must be verified under oath.

B. The form to be adopted and provided by the commission shall require all the information required by Section 6.80.120, together with such additional information as the commission determines to be necessary and proper, including, but not limited to, the following:

1. That the applicant will comply with the mandatory rates and charges as herein provided and as may hereafter be adopted by the commission;

2. That the applicant is capable of and will provide twenty-four-hour emergency wrecker service, including holidays, and that he will have at all times a minimum of two wreckers with crews on duty or available at all times in any twenty-four-hour period;

3. That the applicant will be equipped with two-way electronic communication legally authorized and in operation between each wrecker and the applicant's headquarters or principal place of business during the entire twenty-four hours of each day;

4. That the applicant, upon being licensed to provide emergency service, will immediately subscribe to and at all times be a member in good standing of a central non-government call service which shall be maintained and equipped at all times to handle emergency calls by a direct line of communication from the department of metropolitan police for transmission to licensees. Such central call service must first be approved by the commission. (Ord. 96-612 § 1 (part), 1996)

6.80.525 License—Issuance and contents.

A. If, after the hearing provided for in Section 6.80.610, the commission finds that the applicant is capable, willing and qualified to furnish emergency wrecker service and can conform to the laws of the metropolitan government, the state of Tennessee, the United States and the rules and regulations of the commission, then the commission may issue to such applicant a license to operate an emergency wrecker service; otherwise, the application shall be denied.

B. Such license shall state the name and address of the licensee, the number of emergency wreckers authorized under such license, the date of issuance and such other information as the commission determines to be necessary and proper. (Ord. BL2000-247 § 17, 2000; Ord. 96-612 § 1 (part), 1996)

6.80.530 Liability insurance required.

No license to operate an emergency wrecker service shall be issued, become effective or continue in force and effect unless there is in full force and effect liability insurance policies as described in Section 6.80.140. (Ord. 96-612 § 1 (part), 1996)

6.80.535 License—Fees, expiration, transfer and display.

A. A license issued by the commission to any person permitting such person to operate an emergency wrecker service shall be issued for a period of one year at a fee established by the commission based on the volume of emergency towing operations performed within the emergency service zone. A decal for each emergency wrecker shall be issued by the commission for a period of one year at a fee of one hundred dollars per vehicle.

B. A license issued hereunder shall not be sold, assigned, mortgaged or otherwise transferred without commission approval and shall expire immediately upon the licensee terminating the emergency wrecker service or upon revocation by the commission.

C. A current license issued by the commission shall be prominently and conspicuously displayed at all times upon the premises from which the licensee operates his emergency wrecker service.

D. No licensee shall operate a wrecker or automobile used for towing purposes to remove vehicles from any street, alley, road, highway or thoroughfare or property, whether public or private, located within the area of the metropolitan government or for towing vehicles over the streets, alleys, roads, highways and thoroughfares within the area of the metropolitan government unless a license decal is obtained from the commission annually for each such wrecker or automobile. (Ord. BL2004-435 § 1, 2005; Ord. BL2000-247 §§ 18, 19, 2000; Ord. 96-612 § 1 (part), 1996)

6.80.540 Licensees to provide service.

Only those persons licensed to provide emergency wrecker service shall transport, tow or convey any vehicle constituting an emergency situation as defined in this chapter and only upon the explicit instructions of a metropolitan police officer or state highway patrolman. The commission, however, may by rules and regulations authorize such other licensees to provide emergency wrecker service at those times, to the extent and under those circumstances as it shall by rules and regulations provide. (Ord. 96-612 § 1 (part), 1996)

6.80.545 Service zones.

In order to provide for the immediate removal of those vehicles interrupting the proper and orderly flow of traffic and thereby constituting an emergency situation as declared in Section 6.80.510, the commission is authorized and directed to divide the geographical jurisdictional territory of the metropolitan government into zones for emergency wrecker service, which zones shall be established in a manner which best serves the traffic and safety needs of the community and as near as possible divides the emergency wrecker business equitably among those persons licensed to provide emergency wrecker service. To each zone the commission shall assign at least one licensee.

A. Present Zones Established. The emergency wrecker service zones presently established shall be the first emergency wrecker service zones authorized by this chapter and shall continue as emergency wrecker service zones with those licensees presently assigned to each zone continuing in the zones to which they are now assigned.

B. Method of Altering Zones.

1. The commission shall require all licensees to report all calls which they make to the commission, giving the date, the time, the name of the owner of the vehicle transported, type of vehicle, distance towed and fee charged and the license number. Once each year the commission shall review the efficiency and suitability of the emergency wrecker service zones which have been established and shall by regulations make such changes as the traffic control in the area of the metropolitan government, the welfare of the public and the safety of the motoring public shall require. Such changes shall be made only after a public hearing. The commission shall establish the time and date for a public hearing and shall publish in a newspaper of general circulation in the area of the metropolitan government notice of the proposed public hearing, giving the time and place of such hearing.

2. The commission on its own motion or on the petition of the chief of police of the metropolitan government or any licensee may change the established emergency wrecker service zones or the licensees assigned to such zones. However, before making any such change, the commission shall hold one public hearing a year on such petitions after having published notice, as herein required, and shall keep a record of the proceedings of such hearing; and, within thirty days after the date of such hearing, the commission shall render its decision on the petition or the petition shall be considered denied. No such hearing shall be held on a petition for a change in zones or licensees without giving due notice of the time and place of such hearing to all licensees who may be affected by such change.

C. Response Time. Zone wrecker companies must respond to calls within their zones within thirty minutes when traffic and weather conditions are normal. Excessive response time in normal conditions may result in a review of their zone privileges.

D. Transfer of Zone Assignments.

1. No licensee designated by the commission to provide emergency wrecker service within an assigned emergency wrecker service zone shall sell, assign, mortgage, bequeath, or otherwise transfer the right to service such assigned zone without commission approval following a public hearing as required in subsection (D)(2) of this section.

2. Prior to the transfer of any zone assignment, the commission shall hold a public hearing for the request. The commission shall establish the time and date for the public hearing and shall publish in a newspaper of general circulation within the area of the metropolitan government notice of the proposed public hearing, giving the time and place of such hearing. A nonrefundable fee of two hundred fifty dollars will be charged for each transfer request by any applicant assuming ownership of a wrecker company which already holds a zone assignment. Other applicants for the zone assignment will be charged a nonrefundable fee of two hundred fifty dollars. (Ord. BL2000-247 § 20, 2000; Ord. 96-612 § 1 (part), 1996)

6.80.550 Fees charged.

The schedule of all maximum nonconsent wrecker service fees shall be posted in plain view at the location where vehicles are stored and recovered and inside each towing vehicle. In the event a service vehicle is summoned by the police and the service vehicle arrives at the scene to which summoned and assistance is offered but no longer needed, the maximum fee which may be charged shall be the established drop fee set forth at subsection G of this section.

Rate Schedule for Nonconsent Towing

A. Vehicles Under Seven Thousand Pounds.

1. Towing:

a. Vehicles towed to the metro impound lot to and within the I-265 Loop; sixty-five dollars maximum. [No additional fees may be charged for using other equipment, including dollies, trailers, lifts, slim-jims, go-jacks, winching, or for mileage*].

b. Vehicles towed to metro impound lot outside the I-265 Loop, to and including Briley Parkway/White Bridge Road/Woodmont Avenue/Thompson Lane Circle; seventy-five dollars maximum. [No additional fees may be charged for using other equipment, including dollies, trailers, lifts, slim-jims, go-jacks, winching, or for mileage*].

c. Vehicles towed to metro impound lot from outside Briley Parkway/White Bridge Road/Woodmont Avenue/Thompson Lane Circle out to the Davidson County line; eighty-five dollars maximum. [No additional fees may be charged for using other equipment, including dollies, trailers, lifts, slimjims, go-jacks, winching, or for mileage*].

d. Vehicles towed to company lot; [No additional fees may be charged for using other equipment, including dollies, trailers, lifts, slim-jims, go-jacks, winching, or for mileage*].

i. Vehicles involved in an accident ..... $85.00 maximum

ii. All other vehicles ..... 75.00 maximum

2. Labor:

Charges for labor, including winching, may be charged only after the first hour, and may not exceed a rate of seventy-five dollars per hour. If more than one wrecker is required to remove a vehicle, the rate chargeable for each additional wrecker may not exceed the base rate of seventy-five dollars per hour after the first hour.

3. Mileage:

*Mileage charges may only be incurred for out-of county miles and only when towing at a police officer's request. This rate is not to exceed two dollars per mile.

4. Storage:

Storage rate per day, after first two hours: fifteen dollars maximum (charges for the second day of storage may not be charged until vehicle has been held on lot for twenty-six hours).

B. Vehicles Over Seven Thousand Pounds

2. Additional Fees.

a. Hourly rate for necessary preparation or removal of bumpers, drive shafts before towing is possible, and reconnection after towing is one hundred dollars per hour.

b. Labor rates after first hour for wrecker and driver:

i. Class B wrecker ..... $150 per hour

ii. Class C wrecker ..... $250 per hour

iii. Class C rotator, if needed ..... $300 per hour

c. When wreckers are required to wait at the scene for functions to be performed by others (e.g., emergency personnel), waiting time charges may not exceed one-half the allowable labor rate.

d. When the use of outside labor and equipment is required, wrecker company charges may include not more than an additional twenty-five percent charge.

C. Other Rates.

1. Recovery of vehicle submerged in water ... $105

2. Storage rates, per day (after first two hours on the lot):

a. Motorcycle, ATV $10

b. Mower, miscellaneous equipment $10

c. Car $15

d. Tractor $20

e. Motor home, 26 feet and under in length . $25

f. Motor home, more than 26 feet in length $30

g. Tractor-trailer, commercial bus, house trailer $30

h. Boat, under 19 feet in length $15

i. Boat, 19 to 26 feet in length $25

j. Boat, more than 26 feet in length $30

3. No storage fee may be charged for vehicles stored two hours or less.

1. Base Rates. Base rates apply in the following situations: "Towed vehicles" means those vehicles which can be driven, but are towed to the lot at the request of the owner or police officer. "Driven vehicles" means those vehicles driven to the lot by a wrecker company driver at the request of the owner or police officer. "Wrecked vehicles" means those vehicles that cannot be driven, and must be towed to the lot.

Table 6.80.550(B)(1)

	Towed	**Driven**	**Wrecked**
Straight Trucks and Vans:	$150	$105	$170
Tandem-Axle, Not Loaded:	$175	$105	$195
Tandem-Axle, Loaded:	$200	$105	$220
Recreational Vehicles: 26 Feet & Under in Length:	$140	$105	$160
Over 26 Feet in Length:	$155	$105	$175
Buses (Large):	$200	$105	$225

D. For all vehicles over ten thousand pounds gross vehicle weight which are burned or completely off the roadway and for vehicles which are submerged in water, charges in addition to the above rates may be added for cargo transfers, waiting time or handling of hazardous material.

E. Labor charges for operation of the nonconsent emergency wreckers shall not start until after the first hour. Hourly rates can only be charged for nonconsent emergency wreckers in use or ordered to wait by a law enforcement officer.

F. Use of Class C emergency wreckers or cranes in nonconsent situations must be approved by a superior officer.

G. All licensees who engage in the business of towing vehicles from public or private property shall post a notice on each vehicle, in letters not less than two inches high and appearing in a legible manner on the boom or rear of the wrecker as follows:

"FEE TO DROP VEHICLE
BEFORE DEPARTING: $35.00"

If the owner or operator of the vehicle is present and removes the vehicle to be towed from the premises before it is connected to the towing vehicle, the owner or operator shall not be charged any fee. If the owner or operator of the vehicle is present after the towing vehicle has been connected to the vehicle to be towed, the vehicle shall not be towed, but the owner or operator of the vehicle shall be liable for a reasonable fee not to exceed thirty-five dollars, in lieu of towing, provided the owner or operator of the vehicle forthwith removes the vehicle from the premises. A vehicle shall be deemed connected if every procedure required to secure the vehicle to the wrecker or wrecker

equipment so that the vehicle may be safely towed has been completed at the time the owner or operator arrives, including the attachment of any safety chains.

H. Any towing and storage firm engaged in the business of non-consent towing shall not charge the owner of any towed vehicle or person property in excess of sixty-five dollars for the removal of a vehicle or personal property or in excess of fifteen dollars per day for storage fees. The fee of sixty-five dollars shall be all inclusive; no additional fees may be charged for using dollies, trailers, lifts, slim jims or any other equipment or service, or for mileage. (Amdt. 1 with Ord. BL2004-435 §§ 2—14, 2005; § (4) of Amdt. 1 to Ord. BL2000-247, 4/18/00; Ord. BL-2000-24, § 21, 2000)

6.80.555 Rate card—Display.

Every wrecker used to make nonconsent tows shall have the current rate card issued by the commission setting forth the maximum authorized rates and charges displayed in such a place as to be in full view of anyone wishing to inspect same. (Ord. BL2000-247 § 22, 2000; Ord. 96-612 § 1 (part), 1996)

6.80.560 Wrecker driver—Duty to remove accident debris.

Whenever any driver of a wrecker removes a vehicle from the scene of an accident on the streets, alleys, roads, highways or thoroughfares within the area of the metropolitan government, it shall be the duty of such driver and driver helper to simultaneously remove and carry away from the streets, alleys, roads, highways and thoroughfares at or about the scene of each accident or collision, all glass, metal and debris which may have been cast upon the streets, alleys, roads, highways and thoroughfares as a result of the accident or collision. (Ord. 96-612 § 1 (part), 1996)

6.80.565 Accident reports.

All accidents arising from or in connection with the operation of wreckers which result in the injury or death to any person or damage to any property in an amount exceeding the sum of one hundred dollars shall be reported within twenty-four hours from the time of the occurrence to the department of metropolitan police on a form to be furnished by such department. (Ord. 96-612 § 1 (part), 1996)

6.80.570 Towing place designated.

A. The driver of the wrecker shall tow, transport or convey the vehicle to be towed to any place designated by the owner or operator of such vehicle. It is unlawful for the owner, driver or driver helper of a wrecker or an agent, employee or representative of the owner or driver of a wrecker at the scene of the accident, to pressure or otherwise coerce or insist that the owner or operator of a vehicle sign a work order or agreement at the scene of the place from which the vehicle is to be transported for any repairs to be made on such vehicle.

B. The driver of the wrecker shall in all cases, before moving the vehicle to be towed, ask the owner or operator of such vehicle the place to which he desires the vehicle to be taken and shall transport such vehicle to such place upon the towing charges being paid or secured; otherwise, the vehicle shall be towed or transported to the wrecker service operator's storage lot.

C. If the vehicle to be towed or transported is involved in an accident and the owner or operator thereof is unable to give any instructions in his own behalf, the driver of the wrecker shall tow or transport the wrecked vehicle to the wrecker service operator's storage lot and it will be presumed and considered prima facie evidence that the owner or operator of such vehicle consents to and desires that his vehicle be towed or transported to such place.

D. If the owner or operator of a vehicle is not available and a wrecker has been summoned by a metropolitan police officer as a result of a parking violation, then the vehicle shall be towed or transported to the metropolitan police tow-in lot or, if the metropolitan police officer so orders, to the storage area of the licensee. (Ord. 96-612 § 1 (part), 1996)

6.80.575 Storage facility requirements.

Each site to which vehicles are towed shall comply with the following requirements, and no tow truck operator may take a vehicle to a storage lot which does not meet these standards.

A. No towing company shall tow a vehicle from private property under orders of one not the owner of the vehicle to a storage lot which is outside the geographic limits of Davidson County. All licensees shall, immediately upon connecting the towing vehicle to a vehicle to be towed from private property under orders of one not the owner of such vehicle, tow the vehicle directly to a storage lot owned or operated by such licensee located within the geographic lines of Davidson County. Such towed vehicle shall not be dropped or left at any other lot or on any other property without the consent of the owner for any period of time. No towed vehicle shall be stored on a public street.

B. A storage site shall be fenced or enclosed on all sides to a height of not less than six feet and shall be lighted during the hours of darkness to afford distinct visibility to all sides of the facility. Lighting shall be provided at a minimum average maintained foot-candle value of two on a horizontal plane at the finished surface or grade level.

C. A towed vehicle shall not be stored more than a reasonable walking distance from the area where towing and storage fee payments are received.

D. The operator shall exercise reasonable care to keep towed vehicle and their contents secure at all times.

E. Personal property in vehicles must be released in accordance with state law.

F. Whenever a storage lot is closed or has a gate locked, a conspicuous sign must be posted at the entrance of the storage lot which provides instructions and a local telephone number for obtaining release of a vehicle when the lot is not open. The local telephone number posted shall be answered twenty-four hours a day and someone must be available at the storage lot to release vehicles within a reasonable time after inquiry is made.

G. Any person operating a wrecker upon the streets Davidson County and maintaining a storage lot shall maintain personnel with authority to accept payment and to release any impounded vehicle, on duty seven days a week from six a.m. until ten p.m. each day, and available within a maximum one-hour period to release or provide access to a vehicle upon the request of the owner, from ten p.m. to six a.m.

H. There shall be posted at the entrance to the impound lot nearest the impound lot office a sign, at least twenty-four inches by twenty-four inches, painted or printed white with red lettering the towing charge, the storage rate per day, that no storage fee may be charged if the vehicle has been held less than two hours and that these conditions are required by ordinance of the metropolitan government of Nashville and Davidson County. In addition, such sign shall list the two forms of payment accepted and state that no additional fee may be charged for noncash payment. (Ord. BL2000-247 § 23, 2000)

6.80.580 Prohibited acts.

In addition to the unlawful and prohibited acts contained in Section 6.80.450, it is declared that the following additional acts shall also be prohibited and the license of any person doing any such acts may be revoked, suspended, placed on probation or not renewed:

A. For any person licensed to provide emergency wrecker service or any of his employees to violate any of the laws of the metropolitan government, the state of Tennessee, the United States or the rules and regulations of the commission which reflect unfavorably on the fitness of such licensee to offer emergency wrecker service;

B. For any person licensed to provide emergency wrecker service or any of his employees to answer an emergency wrecker service call outside of the zone to which he is assigned;

C. For any person licensed to provide emergency wrecker service or any of his employees to tow, transport or otherwise remove any vehicle constituting an emergency situation from a location outside the zone to which he is assigned;

D. To remove or transport any vehicle which has been involved in an automobile accident occurring immediately prior to such removal without first notifying the department of metropolitan police and receiving permission from a metropolitan police officer or state highway patrolman on the scene;

E. To proceed with his wrecker to any place where an accident has occurred or a vehicle is needed to be towed unless so summoned to proceed to the scene of such accident;

F. To intercept or respond to any telephone, radio or other communication or call for wrecker service made or directed to another licensee;

G. To go to a place of a wreck by reason of information received by shortwave or police radio; provided, that this shall not apply to communications solely by and between the licensee's place of business and his wrecker relating to calls legally received by him and directed to him by the owner or operator of a vehicle to be towed or by the department of metropolitan police.

H. To tow a vehicle from a public street without authorization from a metropolitan police officer;

I. To remove or cause the removal of any vehicle from private property to a vehicle storage facility that:

1. It not currently licensed by the commission or not in compliance with this chapter or any rule or regulation promulgated pursuant thereto; or

2. Is located outside Davidson County;

J. To fail to remove and transport a vehicle from public or private property to a vehicle storage facility by the most direct and expeditious route;

K. To stop, except for an emergency, at another location while transporting a vehicle removed from private property;

L. To charge more than the maximum fee allowed by this chapter;

M. To fail to notify the police department and obtain a tow control number within one hour after the removal of any vehicle from private property;

N. To interfere with or attempt to interfere with or refuse to cooperate with the director, an inspector or any law enforcement officer or with the conduct of any investigation or discharge of any duty by them.

O. To fail to comply with any rule or regulation established by the commission. (§ (5) of Amdt. 1 to Ord. BL2000-247, 4/18/00; Ord. BL200-247 § 24, 2000; Ord. 96-612 § 1 (part), 1996)

6.80.585 Penalties for violations.

A. The penalty for the first violation of any of the provisions of this chapter shall be not less than two hundred dollars. The penalty for the second and subsequent violations of any of the provisions of this chapter within a twenty-four month period shall be not less than four hundred dollars. Each twenty-four hour period a violation of any of the provisions of this chapter continues shall constitute a separate violation.

B. The imposition of a penalty under subsection A of this section does not prevent the use of other enforcement remedies or procedures applicable to the person or persons charged with the conduct or involved in the violation, including probation, suspension or revocation of their license or such other actions as are within the authority of the commission. (Ord. BL2000-247 § 25, 2000)

Article VI. Hearings

6.80.610 Hearing for applicant for license.

A. Prior to the issuance of any license provided for in this chapter, the commission shall hold a public hearing for the applicant after giving the applicant at least a fifteen-day notice of the time and place of such hearing.

B. The commission is empowered to make all such rules and regulations which it considers necessary and proper for any hearings provided for by this chapter. (Ord. 96-612 § 1 (part), 1996)

6.80.620 Hearing before suspension, revocation or probation and after refusal to renew license or permit.

A. No action to suspend, revoke or place on probation any license or permit provided for in this chapter shall be taken by the commission except in emergency situations until the licensee or permittee has been furnished a written statement of the charges and a notice of the time and place of the hearing to be held thereon. The furnishing of such notice and the reasons for the commission's proposed action shall be given to such licensee or permittee at least fifteen days prior to the date of the hearing. If at such hearing, the commission finds the charges against the licensee or permittee to be true, it may suspend, revoke or place on probation the license or permit previously issued by it.

B. Upon the failure to renew any license or permit, the commission shall so notify the licensee or permittee, giving the licensee or permittee the reasons for its failure to renew the license or permit. The licensee or permittee may by a simple written request addressed to the commission, ask for and request a hearing by the commission as to the reasons for the commission's failure to renew the license or permit. The commission shall then grant the licensee or permittee a hearing and shall fix the time and place for such hearing within thirty days and shall promptly notify the licensee or permittee of the time and place. It shall be incumbent upon the commission at the hearing to substantiate the reasons for its failure to renew the license or permit.

C. At any hearing provided for in this chapter, the licensee or permittee shall have the right to be represented by an attorney of his choice, to present evidence, to have witnesses testify under oath on his behalf and the strict rules of evidence shall not apply. (Ord. 96-612 § 1 (part), 1996)

Chapter 6.82

BUSINESS TRANSACTIONS AFTER A NATURAL DISASTER

Sections:

6.82.010 Prices of goods and services to remain the same after state of emergency.
6.82.020 Exception.
6.82.030 Violation—Prohibited.

6.82.010 Prices of goods and services to remain the same after state of emergency.

The sale or offering for sale of any goods, services or materials at prices in excess of those prices for the same or similar goods, services or materials that were in existence prior to the date of a natural disaster that results in the declaration of a state of emergency by the Governor of the State of Tennessee or by the mayor shall be and the same is hereby prohibited for ninety days following the date of such natural disaster. (Ord. 94-967 § 1, 1994)

6.82.020 Exception.

Any person initially doing business after the date of a natural disaster as described in Section 6.82.010 and any person that can demonstrate that their cost of the particular goods, services or materials have increased since the date of the natural disaster as described in Section 6.82.010 shall be exempt from the provisions of this chapter, provided that the prices at which they offer to sell goods, services or materials is not more than the reasonable price prior to the date of such natural disaster and any increased cost can be demonstrated independently from the effects of such natural disaster. (Ord. 94-967 § 2, 1994)

6.82.030 Violation—Penalty.

Any violation of the provisions of this chapter shall be punished by a fine not to exceed five hundred dollars. (Ord. 94-967 § 3, 1994)

Division II. Urban Services District Regulations

Chapter 6.84

AUCTIONS AND AUCTIONEERS

Sections:

6.84.010	**Selling at auction defined.**
6.84.020	**Inventory and affidavit.**
6.84.030	**Written description of articles.**
6.84.040	**Prohibited auction hours.**
6.84.050	**False statements.**
6.84.060	**Substitution of articles—Penalty.**
6.84.070	**Misrepresentation by auctioneer—Penalty.**
6.84.080	**Prohibited bidding practices.**
6.84.090	**Exceptions to chapter requirements.**

6.84.010 Selling at auction defined.

"Selling at auction" means the offering for sale or selling of such property by the method known as "down hill selling" by which is meant first offering any article at a higher price and then offering the same at successive lower prices until a bidder is secured.

"Selling at auction" also means the offering for sale or selling of such property to the highest bidder. (Prior code § 9-2-1)

6.84.020 Inventory and affidavit.

A. No person shall sell or offer for sale by auction, a stock of merchandise by advertisement, sign, poster or otherwise, until such person has filed in the office of the metropolitan clerk an inventory of such stock of merchandise duly supported by affidavit, as to the quantity, quality, kind or grade of each item thereof.

B. To such inventory there shall be attached an affidavit that such inventory is in all respects true and correct. In case of an individual, such affidavit shall be made by him as such; in case of a firm, it shall be made by one of the partners; and in case of a corporation, it shall be made by the president, general manager, secretary or treasurer.

C. Such inventory and affidavit when so made shall be kept on file as a part of public records kept by the metropolitan clerk. (Prior code § 9-2-5)

6.84.030 Written description of articles.

A. No person shall offer for sale or sell at public auction any diamonds or other precious or semiprecious stones or imitations thereof, watches, clocks, jewelry, glassware or bric-a-brac, unless there is securely attached to each of such articles a tag or label upon which shall be plainly written or printed, in English, a true and correct statement of the kind and quality of metal of which the article is made or composed and the percentage of purity or karat of such metal. In case such articles are plated or overlaid, such tag or label shall contain a true statement of the kind of material or metal covered. When precious or semiprecious stones are offered for sale or sold, such written statement shall set forth the true name, weight, quality and fineness of such stones, and imitations shall be described as such. When watches or clocks are sold, the true names of the manufacturers shall be stated in writing and no part of the movement or mechanism thereof shall be substituted or contain false and misleading names or trademarks, neither shall secondhand or old movements be offered for sale in new cases without a true statement to that effect.

B. Such tag or label shall be treated as a true and correct description of the article sold, and a representation or warranty thereof and shall remain securely attached thereto until the article shall be delivered to the purchaser. (Prior code § 9-2-7)

6.84.040 Prohibited auction hours.

No person shall sell any diamonds, watches, clocks, jewelry, silverware, oriental rugs or like articles at public auction between the hours of six p.m. and eight a.m. (Prior code § 9-2-6)

6.84.050 False statements.

No auctioneer of personal property shall, with intent to induce any person to purchase the same, make any false representation or statement as to the ownership or the quality of the property offered for sale or as to the property or circumstances of the owner of such property, or sell goods or offer for sale at auction or advertise for sale any goods, wares or merchandise, falsely representing or pretending such goods, wares or merchandise to be in whole or in part a bankrupt or insolvent stock or damaged goods or goods saved from a fire, or make any false statements as to the purchase, history or character of such goods, wares or merchandise. (Prior code § 9-2-4)

6.84.060 Substitution of articles—Penalty.

A. No auctioneer of personal property shall offer for sale at public auction any article and induce its purchase

by any bid and thereafter substitute any article in lieu of that offered and purchased by the bidder.

B. Upon conviction of a second offense, the license of such auctioneer shall be revoked. (Prior code § 9-2-3)

6.84.070 Misrepresentation by auctioneer—Penalty.

A. No auctioneer of personal property shall knowingly or negligently misrepresent the quantity or quality of any article at any auction sale.

B. Upon conviction of a second offense, the license of such auctioneer shall be revoked and another such license shall not be issued to him within one year. (Prior code § 9-2-2)

6.84.080 Prohibited bidding practices.

It is unlawful for any person to act or to employ another to act as bybidder or what is commonly known as "capper" or "booster" at any auction sale of diamonds, watches, jewelry, silverware, etc., or to make or accept any false or misleading bids or to pretend to buy or sell any such article sold or offered for sale at any such auction. (Prior code § 9-2-8)

6.84.090 Exceptions to chapter requirements.

The provisions of this chapter shall not extend to judicial sales, sales under executions, executor or administrators' sales, sales under the terms of a mortgage or deed of trust, sales by public officers in the performance of their official duties or to any auction held for a charitable or benevolent purpose. (Prior code § 9-2-9)

Chapter 6.88

AUCTION SALES OF AUTOMOBILES OR JEWELRY

Sections:

6.88.010 Purpose.
6.88.020 Compliance with provisions.
6.88.030 Exceptions.
6.88.040 Permit—Application.
6.88.050 Permit—Bond required.
6.88.060 Permit—Issuance, form and fee.
6.88.070 Display of application and permit.
6.88.080 Reading of application and permit.
6.88.090 Prohibited acts.

6.88.010 Purpose.

The purpose of this chapter is to protect the public or purchasers at auction sales where automobiles or jewelry are offered for sale, and also bona fide merchants who are regularly engaged in the sale of automobiles and jewelry. (Prior code § 9-2-12)

6.88.020 Compliance with provisions.

It is unlawful for any person, directly or indirectly, through agents or otherwise, to sell or offer for sale at public auction within the urban services district any automobile or jewelry, unless the provisions of this chapter are complied with. (Prior code § 9-2-10)

6.88.030 Exceptions.

This chapter shall have no application to auction sales conducted under and by virtue of legal process, decree of court, or under and by virtue of a bona fide mortgage or deed of trust, pledge, or where the property is required by law to be sold at public outcry. (Prior code § 9-2-11)

6.88.040 Permit—Application.

A. Any person desiring to conduct an auction sale to offer for sale thereat any jewelry or automobiles, shall first file a written application for a permit therefor with the metropolitan collections officer.

B. The application for a permit shall contain the following:

1. The name, address and occupation or business of the person desiring to conduct such auction;

2. The name, address and occupation or business of the person for whom the auction is to be conducted, if other than the applicant;

3. The name and address of the owner of the merchandise to be offered at such auction, with a true and complete itemized inventory of the property to be offered for sale, showing the cost price thereof and the source of title thereto. Where the applicant for the permit is to conduct an auction sale of automobiles, the make of each automobile, including the motor and serial numbers thereof, shall be included in the application;

4. The place and hour of such auction, with an estimate of the duration thereof;

5. The name and address of the auctioneer who will call or cry the auction.

C. The application for a permit shall be sworn to by the applicant before some person authorized by law to administer oaths. (Prior code § 9-2-13)

6.88.050 Permit—Bond required.

The applicant for such permit shall also file with the metropolitan collections officer, at the same time the application is made, a bond in the penal sum of three thousand dollars, with a surety company authorized to do business in the state as surety, in the following form:

State of Tennessee,
Metropolitan Government of Nashville
and Davidson County.

Know All Men By These Presents:

That we, _____, as principal, and _____, as surety, as held and firmly bound unto the State of Tennessee in the penal sum of three thousand ($3,000.00) dollars, for the payment whereof will and truly to be made, we bind ourselves respectively and our heirs and administrators.

The condition of this bond is such that, whereas under an ordinance of the Metropolitan Government of Nashville and Davidson County it is necessary, in order to lawfully conduct an auction sale where automobiles or jewelry are sold, to obtain a permit from the metropolitan collections officer so to do, and for the auction to be conducted as provided by the terms of said ordinance, and the undersigned principal intends to conduct an auction of (here state whether automobiles or jewelry) on the _____day of _____, 19___, in the Urban Services District of the Metropolitan Government of Nashville and Davidson County;

Now, if said auction sale is conducted as provided by said ordinance, this obligation shall be null and void, but otherwise shall remain in full force and effect.

It is expressly understood that this bond, while made payable to the State of Tennessee, is for the use and benefit of all persons suffering loss or damage by reason of the violation of said ordinance by the above named principal, and any person or persons purchasing at said auction sale, suffering loss or damage by reason of the violation of said ordinance, may maintain an action against the principal and the surety on this bond, to recover for such loss or damage.

Witness our hands on this _____day of _____19 ___.

_____
Principal

_____
Surety

Approved:

_____
Metropolitan Collections Officer
(Prior code § 9-2-14)

6.88.060 Permit—Issuance, form and fee.

A. After the application for a permit in the manner and form as provided in Section 6.88.040 and the bond provided for in Section 6.88.050 have been filed and approved by the metropolitan collections officer, it shall then be the duty of the metropolitan collections officer to next ascertain if the applicant has paid all privilege taxes due the city to conduct such sale, and, in addition, the applicant will pay to the metropolitan government an amount equal to twice the amount fixed by law as a privilege tax for a transient merchant. If such taxes have been paid by the applicant, it shall then be the duty of the metropolitan collections officer to issue a permit to the applicant on the following form:

State of Tennessee,
Metropolitan Government of Nashville
and Davidson County.

The Metropolitan Government of Nashville and Davidson County hereby permits _____to conduct an auction sale at _____in the Urban Services District of said Metropolitan Government, between the dates of _____and _____, 19___, in accordance with the application of _____for this permit, a copy of which application for a permit is attached hereto and made a part hereof.

This _____day of _____, 19 ___.

_____
Metropolitan Collections Officer

B. The metropolitan collections officer shall attach to the permit a copy of the application made therefor.

C. Such a permit shall authorize the holder thereof to conduct an auction for six consecutive days, Sundays and holidays excepted; provided, that a permit shall not be issued to the same applicant, or for the same business, more than once in any period of twelve months; provided further, that no permit shall be issued for any auction sale involving the sale of any articles mentioned in Section 6.84.030 to be held during the month of December in any year.

D. The applicant shall pay a fee to the metropolitan collections officer of five dollars for the issuance of the permit, which sum shall by the metropolitan collections officer be paid into the general fund of the metropolitan government. (Prior code § 9-2-15)

6.88.070 Display of application and permit.

Each person holding a permit under this chapter shall display at the auction sale the application for such permit, and the permit, at the place where such auction sale is conducted, continuously during sale. (Prior code § 9-2-17)

6.88.080 Reading of application and permit.

At an auction sale where automobiles or jewelry are sold, it shall be the duty of the auctioneer conducting the auction to read to those assembled, before any property is offered for sale, the application made for the permit, and the permit authorizing the sale. (Prior code § 9-2-16)

6.88.090 Prohibited acts.

It is unlawful:

A. For any auctioneer at such sale to fail to read the application and permit to those assembled, before commencing the sale of the property;

B. For any auctioneer or others interested in the sale to offer for sale at the auction any property other than that described in the application;

C. For any auctioneer to knowingly misrepresent the quality or value of any article offered for sale at such auction sale;

D. For any auctioneer to make any false statement of misrepresentation as to the ownership of, or the character or circumstances of the owner or pretended owner of, such property, for the purpose of inducing the sale thereof, or to make any false statement or misrepresentation as to the purchase, history or character of such property;

E. For any auctioneer or person conducting such auction sale to represent or sell as new or unused property any secondhand or used merchandise;

F. For any person conducting an auction sale under this chapter to substitute any article in lieu of that described in the application for a permit and offered to and purchased by the bidder;

G. For any person having a permit under this chapter to alter, transfer, lend, sell or rent out his permit, or to use any permit not his own;

H. For any person to falsely represent himself to hold a permit under this chapter or to wrongfully use a permit issued hereunder;

I. To conduct an auction sale covered by this chapter without a permit to do so, or after the expiration of the permit issued;

J. For any auctioneer or person conducting an auction covered by this chapter to sell, or offer for sale, at such auction any article not specifically listed in the inventory of application for a permit. (Prior code § 9-2-18)

Chapter 6.92

BANKRUPTCY, CLOSE-OUT AND SIMILAR SALES

Sections:

6.92.010	License required—Fee.
6.92.020	Exceptions to chapter applicability.
6.92.030	Conditions for conduct of sales.
6.92.040	Statement, inventory and affidavit.
6.92.050	Records—Changing items during sales.
6.92.060	Cancellation of license.

6.92.010 License required—Fee.

A. It is unlawful for any person, in the urban services district, to advertise or conduct any sale of goods, wares or merchandise at retail that is represented as bankrupt, insolvent, assignee, adjuster, trustee, executor, administrator, receiver or manufacturer's close-out, liquidation, fire or water damage sale, or any other sale which, by representation or advertising, is intended to lead the public to believe that the person conducting such sale is selling out the merchandise at a sacrifice price without first obtaining and filing with the Davidson County clerk a "closing-out sale license."

B. The fee for such license shall be twenty-five dollars for each day such sale is conducted. The license fee herein set out shall not be assessed against any bona fide merchant who has been engaged in business in the urban services district for at least two years prior to time of such sale and who has paid his privilege and ad valorem taxes during such time, provided such sale is not conducted for more than a period of forty-five days in any one year. (Ord. 93-791 § 1, 1993; prior code § 24-2-18)

6.92.020 Exceptions to chapter applicability.

The provisions of this chapter shall not be applicable to trustees in bankruptcy or other public officers acting under judicial process. (Prior code § 24-2-23)

6.92.030 Conditions for conduct of sales.

It is unlawful for any person to conduct a sale as set out in Section 6.92.010 unless such goods, wares or merchandise are a bona fide stock as represented, and the sale is being conducted for the purpose set out in the representation and advertisement. (Prior code § 24-2-19)

6.92.040 Statement, inventory and affidavit.

As a condition precedent to the obtaining of the license required by Section 6.92.010, there shall be filed in the

office of the Davidson County clerk, with the application for the license, a statement showing all parties who have any interest in such sale and an accurate list of the stock of goods, wares and merchandise to be sold at such sale under such license, together with the wholesale price thereof and the prices paid by the seller, which inventory or list shall be signed by the person taking the license under affidavit that the information there given is personally known by the affiant to be true. (Ord. 93-791 § 2, 1993; prior code § 24-2-20)

6.92.050 Records—Changing items during sales.

It is unlawful to sell at any sale regulated by this chapter or to list any inventory required by this chapter any goods, wares or merchandise which are not in the stock of the business at the time the affidavit is made. It is unlawful to make any additions or replacements to such stock during the time of the sale and to fail, neglect or refuse to keep in writing or typewriting a true copy of every article sold, which records shall be filed with the Davidson County clerk. (Ord. 93-791 § 3, 1993; prior code § 24-2-21)

6.92.060 Cancellation of license.

If, at any time, the Davidson County clerk finds that the seller at any sale regulated by this chapter has violated any of the provisions of this article, he may cancel the license issued to such person. (Ord. 93-791 § 4, 1993; prior code § 24-2-22)

Chapter 6.100

PAWNBROKERS, SECONDHAND DEALERS AND JUNK DEALERS

Sections:

Article I. Pawnbrokers

6.100.010 Signs—License required.
6.100.020 Register requirements.
6.100.030 Daily reports—Inspection—Violation.
6.100.040 Time restrictions before resale.

Article II. Regulations for Specific Materials

6.100.050 Automobile dealers—Register, daily reports—Inspection.
6.100.060 Book sales—Reports—Inspection.
6.100.070 Bottle dealers—Register—Inspection—Purchases.
6.100.080 Jewelry—Register, daily reports—Inspection.
6.100.090 Metal items—Daily reports—Inspection.
6.100.100 Plumbing material—Authorized sellers—Register—Inspection.
6.100.110 Plumbing material—Daily reports—Inspection.

Article I. Pawnbrokers

6.100.010 Signs—License required.

It is unlawful for any person engaged in the sale or exchange of secondhand articles or any other business, to display any sign, device or subterfuge in or about his premises where such business is conducted, resembling the ordinary sign commonly used by pawnbrokers, unless such person shall have first secured from the metropolitan government and has in his possession a license to engage in a general pawnbroking business. (Prior code § 31-2-8)

6.100.020 Register requirements.

A. Pawnbrokers shall keep a book in which every article taken by them in pawn and every secondhand article purchased by them shall be registered, and in which shall be given as minute a description of each article as is possible. The maker's name and the number of all watches received by them shall be kept in such book, and the name, color and residence of each individual pawning or selling such articles.

B. The register shall at all times be kept at the place of business of every pawnbroker, and all city officers having police power shall, at all times, be allowed free access to the same, and the brokers shall give to the officers any information in their power concerning such articles and the persons selling or pawning the same. (Prior code § 31-2-9)

6.100.030 Daily reports—Inspection—Violation.

A. All pawnbrokers doing business in the urban services district shall furnish to the chief of police daily reports, at his office, showing fully the name, age, sex, color, residence and general description of each person who shall have pawned, pledged or sold any article during the preceding day, together with a full description of the article pawned, pledged or sold, including the number on each article bearing a number, and in the case of watches, both the number in the case and the number on the works.

B. In addition to furnishing to the chief of police such daily reports, pawnbrokers shall keep duplicates of the reports in a well-bound book, which book at all times

shall be subject to the inspection of any member of the police department.

C. When any pawnbroker shall fail, refuse or neglect to furnish to the chief of police daily reports required by this section or shall fail or refuse to keep duplicates of the reports for the inspection of the members of the police force, each day that such neglect or refusal shall continue shall constitute a separate offense. (Prior code § 31-2-10)

6.100.040 Time restrictions before resale.

Pawnbrokers, junk dealers and all other persons dealing in secondhand goods, wares and merchandise shall retain possession, at their place of business, of all goods, wares or merchandise purchased by them for a period of fifteen days before a resale or exchange thereof; provided, that a resale or exchange may be allowed to be made before the expiration of the fifteen-day period upon obtaining a written permit from the chief of police. (Prior code § 31-2-11)

Article II. Regulations for Specific Materials

6.100.050 Automobile dealers—Register, daily reports—Inspection.

A. It shall be the duty of all persons dealing in the purchase, sale or exchange of secondhand automobiles and motor-driven vehicles or who purchase secondhand automobiles or auto-driven vehicles or supplies or parts of automobiles, as an occupation, to keep a book in which every article received by them in the course of their business shall be registered and in which shall be given a minute description of the same. The maker's name, and the name, age, sex, color, residence and general description of each and every individual selling or exchanging such automobile or motor driven vehicle or supplies and parts of automobiles above designated, and the description and identification of such articles and persons selling the same shall be entered in the book or register of such dealer.

B. The register shall at all times be kept at the place of business of such dealer. Every member of the police department shall be allowed free access to such register or book. The dealer shall give police officers of the metropolitan government all information within their knowledge concerning such articles and the persons selling or exchanging the same.

C. All dealers engaged in the business described in subsection A of this section shall furnish the chief of police daily reports at his office showing fully the name, age, sex, color and general description of each person who shall have sold or exchanged any secondhand article or vehicle above designated, during the preceding day, and a full description of the article sold or exchanged by such person, including the number and make of such article or vehicle where ascertainable, and the day and hour of the transaction.

D. Such dealers shall be required to keep duplicates of such reports in a well-bound book or register, which shall be subject to inspection by any member of the police department. (Prior code § 31-2-6)

6.100.060 Book sales—Reports—Inspection.

A. It is unlawful for any dealer in secondhand books to buy, sell or exchange any book belonging to or containing the stamp or name, either on the inside of the front or back cover thereof, of the board of education, of any private or parochial school, of the public library or of any person operating a circulating or lending library. The possession of any such book containing a stamp or name of the board of education, of any private or parochial school, of the public library or of any person operating a circulating or lending library that has been mutilated or contains evidence of the stamp or name having been erased or removed shall be prima facie evidence of a violation of this section.

B. All dealers in secondhand books shall make daily reports to the chief of police, upon forms furnished by the police department, of all secondhand books of every kind and character purchased whatsoever, with the name of the book and the author thereof, and the name and address, age, sex, color and general description of the person from whom such purchase was made; provided, that any such dealer purchasing a library of more than ten volumes from one person shall not be required to specifically describe each book so purchased, a general description of which shall be deemed sufficient.

C. A duplicate copy of the daily report shall be retained by all dealers in secondhand books, in a well-bound book, which shall be kept for the inspection of members of the police department. The daily reports to be furnished the chief of police shall be mailed at the close of the day's business by the dealer or brought to the office of the chief of police at the police station not later than two p.m. on the following day. (Prior code § 31-2-7)

6.100.070 Bottle dealers—Register—Inspection—Purchases.

A. All secondhand bottle dealers in the urban services district, by which is meant all persons who shall, as a part of their business or occupation, buy, sell or trade in empty bottles which have theretofore been used, shall keep a book in which they shall promptly enter the names of all persons from whom they buy or get any such empty bottles, followed by the date of purchase, the amount paid therefor, the number of such bottles and, if the same bear in the glass the name of the original user, such name shall

be indicated in a description of the bottles purchased, the entries to be made in chronological order from day to day as the business is transacted.

B. Such book shall at all times be open to inspection of the police or other officer or any person who may desire to see the same, and shall be in good faith kept and preserved by such dealers for the convenient inspection aforesaid.

C. No such buyer or dealer in secondhand bottles shall purchase or receive in any way any such bottles from any minor under sixteen years of age, whether the same is obtained directly from such minor or through or by the aid of such minor, the purpose of this section being to make it unlawful for anyone to deal with such minor in such article or business, or to allow any such minor to be connected with the same.

D. The dealers or buyers aforesaid shall only purchase such bottles from persons who are personally known to them, or of whose identification they are certain, and shall promptly give to any officer or other person making inquiries such information as will enable the seller to be identified. (Prior code § 31-2-1)

6.100.080 Jewelry—Register, daily reports—Inspection.

A. It shall be the duty of all persons dealing in the purchase, sale or exchange of secondhand jewelry, watches, clocks, diamonds, cutlery, wearing apparel, old gold, silver, platinum or any other secondhand manufactured articles, composed wholly or in part of gold, silver or platinum, to keep a book in which every article received by them in the course of their business shall be registered, and in which shall be given as minute a description of every article as it is possible, and the maker's name and number of all watches so received by them, and the name, age, sex, color, residence and general description of each and every individual selling or exchanging such articles, shall be taken and entered in the register.

B. The register shall at all times be kept at the place of business of every person engaging in the business aforesaid. Every member of the police department shall be allowed free access to the register and the person shall give to such officers all information in his power concerning such articles and all persons selling or exchanging the same.

C. All persons, engaging in business, as described in the preceding paragraph, shall furnish to the chief of police daily reports at his office, showing fully the name, age, sex, color, residence and general description of each person who shall have sold or exchanged any secondhand article during the preceding day, together with a full description of the articles sold or exchanged by such person, including the number of each article bearing a number, and in the case of watches, both the number in the case and the number of the works, and the day and hour of the transaction.

D. Every person engaging in such business shall keep duplicates of such reports, in a well-bound book or register, which book or register shall at all times be subject to the inspection of any member of the police department. (Prior code § 31-2-5)

6.100.090 Metal items—Daily reports—Inspection.

A. All junk dealers or dealers in secondhand lead pipe, fixtures, grates, grate fronts, fenders, boilers, old iron, copper and other metal house furnishing and plumbing material, doing business in the urban services district, shall furnish to the chief of police daily reports at his office, showing fully the name, age, sex, color, residence and other description of each person who shall have sold, pawned or pledged any secondhand metal, lead pipe, fixtures, grates, grate fronts, fenders, boilers, old iron, copper and other metal house furnishings and plumbing material during the preceding day, together with a full description of the article so sold, pawned or pledged, and the day and hour of the purchase, so as to enable the chief of police to identify the articles as well as the person dealing with such junk shop dealer.

B. In addition to furnishing the chief of police such daily reports, such junk shop dealer shall keep a duplicate of such reports in a well-bound book, which book shall be subject to the inspection of any member of the police department. (Prior code § 31-2-2)

6.100.100 Plumbing material—Authorized sellers—Register—Inspection.

A. No keeper of a junk shop or a secondhand dealer shall purchase from anyone, except from plumbers holding licenses as such from the metropolitan government, licensed peddlers or the owners of buildings from which the material is taken, any lead pipe, faucets, grates, grate fronts, fenders, boilers or other plumbing material.

B. Every keeper of a junk shop and secondhand dealer shall provide and keep a book in which shall be fairly written, at the time of every purchase of such articles, a description of the articles so purchased, the name and residence of the person from whom such purchase was made and the day and hour of the purchase.

C. Every such book shall at all times be open to the inspection of any metropolitan officer having police powers, and the book shall be kept at the place of business of the junk shop keeper or secondhand dealers. (Prior code § 31-2-3)

6.100.110 Plumbing material—Daily reports—Inspection.

A. All licensed peddlers buying and selling lead pipe, fixtures, grates, grate fronts, fenders, boilers, old iron, copper and other metal house furnishings and plumbing material, doing business in the urban services district, shall furnish to the chief of police daily reports, at his office, showing fully the name, age, sex, color, residence and other description of each person who has sold, pawned or pledged any secondhand metal, lead pipe, fixtures, grates, grate fronts, fenders, boilers, old iron, copper and other metal house furnishings and plumbing material during the preceding day to such licensed peddler, together with a full description of the article so sold, pawned or pledged and the day and hour of the purchase, so as to enable the chief of police to identify the articles as well as the person selling such junk to such licensed peddler.

B. In addition to furnishing the chief of police daily reports, such licensed peddler shall keep a duplicate of the reports in a well-bound book, which book shall be subject to inspection by any member of the police department. (Prior code § 31-2-4)

Chapter 6.104

PRODUCE PEDDLERS

Sections:

6.104.010 License required—Exceptions.
6.104.020 Farmers selling own articles—Permit—Expiration and renewal.
6.104.030 Farmers selling other articles—Violation and penalty.
6.104.040 Parking vehicles within Public Square.

6.104.010 License required—Exceptions.

It is unlawful for any person to sell any vegetables, produce, berries, fruits, fresh or salt meats or other eatables upon the streets or public places within the urban services district without first obtaining a peddler or huckster's license from the metropolitan government, unless such person is a bona fide farmer, or the direct agent or representative of such farmer, who produces, grows or raises the articles which he vends, or, in the case of food obtained from animals or fowl, who breeds and raises or who shall have owned, grazed or fed the same for a period of at least sixty days preceding the date of exposing for sale; provided, that the above provision shall not be construed to prohibit the sale of eggs, butter and milk secured from fowl or cows purchased by the farmer, whether the same have been owned and fed by him for sixty days or not; provided further, that the above provision shall not be construed to deny to any farmer the right and privilege when he is bringing into market such produce grown by himself, or bringing into market as a matter of accommodation such produce of his immediate or next-door neighbor as such neighbor would be entitled to sell on the market if he were coming to town; provided further, that such farmer shall have a request in writing signed by his neighbor stating that the parties are next-door neighbors and itemizing the produce sent to the market for sale. (Prior code § 23-2-1)

6.104.020 Farmers selling own articles—Permit—Expiration and renewal.

A. Any farmer who raises his own produce or who grows or raises the articles he vends, who desires to sell or expose for sale such article or produce upon the Public Square or the streets or other public places in the urban services district shall, before doing so, obtain from the metropolitan collections officer, free of cost, a permit in the form of a brass tab, which shall be fastened on the right side of the vehicle from which his goods are offered for sale. Such tag shall be evidence that the owner thereof is entitled to sell such produce or articles without a license; provided, that the metropolitan collections officer shall not issue such a tag until the applicant files with him an affidavit stating the name and residence of the applicant and that he intends to sell or offer for sale only goods, articles and produce raised or grown by himself; provided further, that this affidavit shall include the provisions contained in Section 6.104.010 with respect to eggs, butter and milk and the handling and selling of a neighbor's produce by a farmer.

B. Such permit shall expire on December 15th of each year and shall be renewed on that date, and a new affidavit shall be furnished on each application for a renewal of such a permit. The metropolitan collections officer shall keep a record of the name and address of each party to whom such tag is issued. (Prior code § 23-2-2)

6.104.030 Farmers selling other articles—Violation and penalty.

A. It is unlawful for any farmer, producer or other person who has obtained a permit as provided by Section 6.104.020 to sell or expose for sale on the Public Square, streets or public places of the city any vegetables, produce, fruits, berries, fresh or salt meats or other eatables which he did not produce, grow or raise, or, in the case of food, which he did not obtain from animals or fowl which were bred or raised by such person, or which were not owned by

him at least sixty days prior to the date of exposing for sale, unless he has first obtained a peddler's license; provided, that the above provision shall not be construed to prohibit the sale of eggs, butter and milk secured from fowl or cows purchased by the farmer, whether the same have been owned and fed by him for sixty days or not; provided further, that the above provision shall not be construed to deny to any farmer the right and privilege, when he is bringing into market such produce grown by himself, of bringing into market as a matter of accommodation such produce of his immediate or next-door neighbor as such neighbor would be entitled to sell on the market if he were coming to town; provided further, that such farmer shall have a request in writing signed by his neighbor stating that the parties are next-door neighbors and itemizing the produce sent to the market for sale; provided further, that this section shall not interfere with or repeal any ordinance now in force which prohibits sales on the Public Square by hucksters or peddlers.

B. A violation of the provisions of this section shall be punishable as provided in Section 1.01.030, and in addition thereto, the violator, upon conviction, shall be deprived of his permit and shall not be permitted to obtain another permit for the remainder of the year in which the violation is committed, and he shall forfeit all privileges connected with such permit.

C. This section shall be enforced by the market master or by any member of the metropolitan police force. (Ord. 95-1329 § 2 (part), 1995; prior code § 23-2-3)

6.104.040 Parking vehicles within Public Square.

It is unlawful for any person to park, place or stand any wagon, automobile, truck, pushcart or any other vehicle or container of any kind whatsoever within the area of the Public Square or upon that portion within the Public Square of any street passing through or around the Public Square, for the purpose of selling, offering for sale or exposing for sale any fruits, berries, nuts, vegetables, fresh meats, cured meats, sausage, milk, cider, vinegar, condiments, butter, eggs, live poultry, dressed poultry, cattle, hogs, sheep, livestock, game, fish, flowers, shrubs or any product of farm, field or garden, or any article of goods, wares or merchandise or any other article whatsoever. (Prior code § 23-2-4)